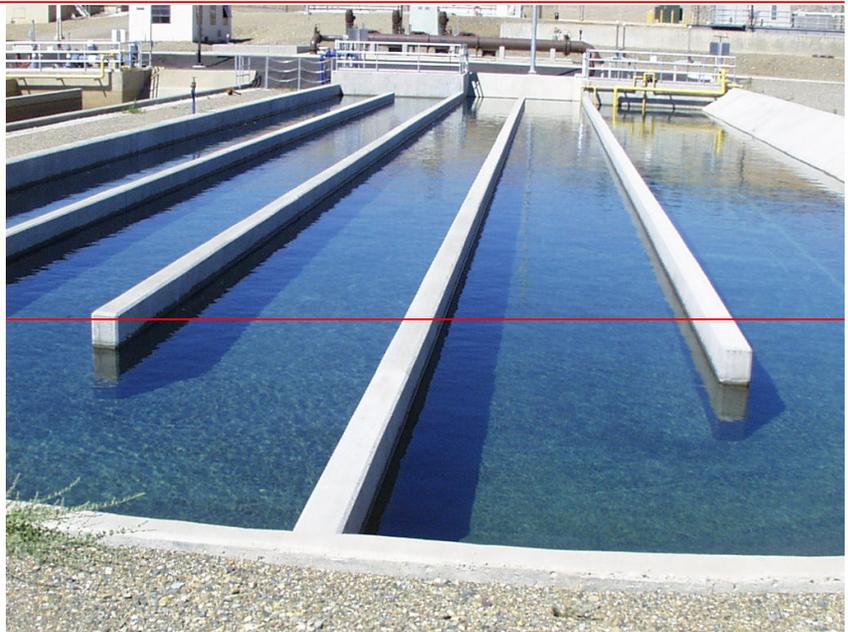


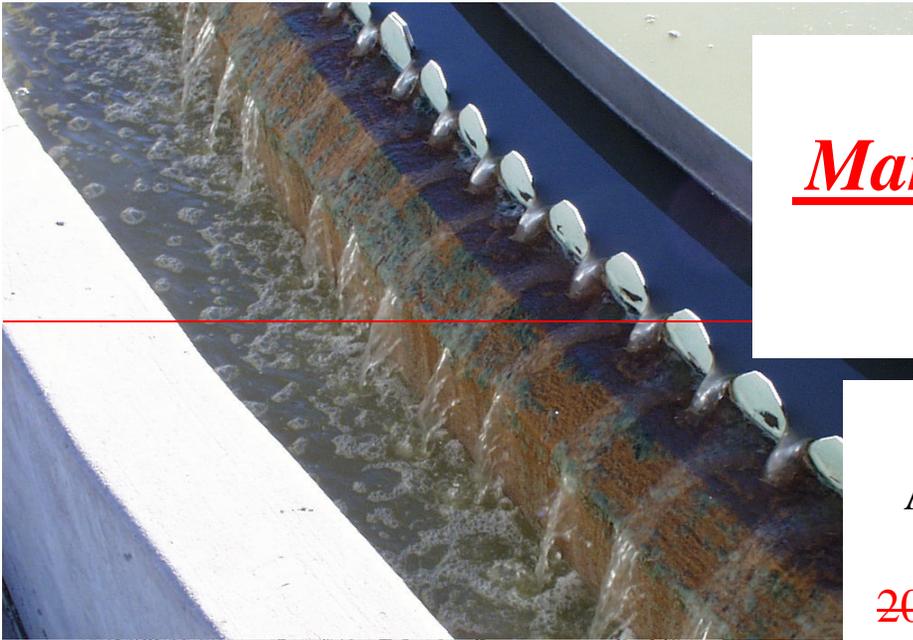
**STATE
WATER
RESOURCES
CONTROL
BOARD**



**CALIFORNIA
ENVIRONMENTAL
PROTECTION
AGENCY**



**Policy for Implementing
~~The~~ Clean Water State Revolving Fund
~~For Construction of~~
~~Wastewater Treatment Facilities~~**



March 15, 2013,
DRAFT

Amended
March
2009<Date>



**POLICY FOR IMPLEMENTING
THE CLEAN WATER STATE REVOLVING FUND FOR
CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES**

Prepared by:
THE DIVISION OF FINANCIAL ASSISTANCE

STATE WATER RESOURCES CONTROL BOARD
STATE OF CALIFORNIA

| ~~Last a~~Amended ~~on March 17, 2009~~<Date>

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POLICY FOR IMPLEMENTING THE CLEAN WATER STATE REVOLVING FUND
~~FOR CONSTRUCTION OF WASTEWATER TREATMENT FACILITIES~~

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EXECUTIVE SUMMARY

This Policy was written to implement the 1987 Amendments to the Federal Clean Water Act (CWA), which created the Clean Water State Revolving Fund (CWSRF) Program. The CWSRF provides various types of assistance for construction of publicly-eOwned wastewater treatment works (POTW), including sanitary sewer collection systems, sewer interceptors, and water reclamation and recycling facilities, implementation of programs and projects to control pollution from nonpoint sources and storm water drainage, and development and implementation of estuary cleanup programs. Theis CWSRF Program offers low cost financing agreements for water quality projects.

Policy covers CWSRF assistance for the construction of wastewater treatment and water recycling facilities.

This Policy is organized in sequential Project development order. Sections I through VII discuss general requirements, including the Statewide Project Priority List (Statewide List) system, Refinancing, Water Recycling Projects, and Match, Section VIII discusses Planning Financing, and Section IX discusses Construction Financing. Sections X through XII discuss the Construction Financing Agreement, the Approval of Award, and Disbursements. Sections XIII and XIV discuss Construction and Operation, respectively. Sections XV through XVIII discuss Record Keeping, Payments, State Water Board Reservation of Authority, and Eligibility Disputes.

I. INTRODUCTION

~~This Policy was written to implement the federal CWA's CWSRF Program in California.~~ The ~~F~~ederal CWA provides for the creation of a CWSRF Program capitalized ~~in part~~ by federal ~~and state~~ funds. The ~~F~~ederal CWA authorizes financial assistance through loans and other financing mechanisms for construction of wastewater treatment and ~~sewage collection systems,~~ water recycling facilities, ~~storm water projects,~~ for implementation of nonpoint source and storm drainage pollution control management programs, and for the development and implementation of estuary conservation and management programs. ~~The CWSRF is intended to provide financial assistance in perpetuity using state and federal funds.~~

~~The Policy for Implementing the Clean Water State Revolving Fund for Construction of Wastewater Treatment Facilities (CWSRF Policy) only addresses the issuance of financial assistance for wastewater treatment and water recycling facilities.~~ addresses all eligible project types mentioned above. It is organized in order of project development, and it sets forth the requirements to obtain CWSRF financing. ~~The priority system, however, covers all eligible CWSRF activities. The CWSRF is intended to provide financial assistance in perpetuity using State of California (State) and federal funds.~~

~~This is the eleventh amendment to the CWSRF Policy originally adopted by the State Water Resources Control Board (State Water Board) on August 18, 1988. The requirements contained in provisions of this amended CWSRF Policy apply after are effective March 17, 2009 October 1, 2013, unless otherwise required by federal or state statute, guidance, regulation, or agreement. A flow chart of the overall program process is provided in Appendix A. A list of contacts in the Division is provided in Appendix B. Appendices C through O contain additional Division guidance material on the CWSRF Program.~~

II. PURPOSE AND OBJECTIVE

~~The Under federal and state law the~~ primary purpose of the CWSRF Program is to provide ~~implement the CWA and various State laws including the Clean Water Bond Law of 1984; the Safe, Clean, Reliable Water Supply Act (1996 Bond Law); the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act (2000 Bond Law); the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 (Proposition 84), and any subsequent bond laws,~~ by assisting in the financing of for (1) construction of wastewater treatment facilities, sewage collection systems, and sewage interceptors ~~necessary to prevent water pollution~~ or, recycle wastewater, (2) implementation of correct ~~nonpoint source and storm drainage pollution~~ problems solutions, and (3) provide for ~~estuary enhancement, and thereby protect and promote the health, safety, and welfare of the inhabitants of the S~~ state.

The State Water Board ~~is also interested in~~ seeks to ~~reducing~~ the effects of climate change and to promoting ~~promote~~ sustainable water resources for future

generations. ~~The~~ This provisions of this Policy ~~are~~ is designed to support these secondary objectives where economically and technically feasible. These secondary objectives must be cost-effective and essential components of to proposed facilities/projects that ~~primarily support the purposes of the~~ meet the federal and state criteria in the preceding paragraph and support the policy goals of the State Water Board.

III. DEFINITIONS

The following words where used in this CWSRF Policy shall have the meaning hereafter ascribed to them:

- (a) “Allowance” or “soft costs” means an amount of money for eligible Project planning, design, value engineering, construction management, and administration costs of the Pproject.
- (b) “Applicant” means, for the purpose of a publicly owned treatment works project, a city, town, district, state agency, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created under Sstate law, ~~or an Indian tribe or an authorized Indian tribal organization~~ having jurisdiction over disposal of sewage, industrial wastes, or other waste, an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under Ssection 208 of the Ffederal CWA applying for CWSRF funding. For the purpose of an expanded use project, “applicant” includes the foregoing, as well as a 501 (c)(3) non-profit organization.
- ~~(c) “Areawide Waste Treatment Management Plan” means a plan prepared in conformance with Section 208 of the Federal CWA.~~
- (c) “Clean Water Act” or “CWA” means the Federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), including any amendments thereto.
- (d) “Capitalization Grant” means federal CWSRF funds granted to the CWSRF Program State Water Board by the United States Environmental Protection Agency (USEPA) in a particular year pursuant to certain terms and conditions. ~~in accordance with federal rules or laws.~~
- (e) “CEQA” means the California Environmental Quality Act (commencing at Section 21000 of the Public Resources Code).
- ~~(f) “Completion of Construction” means the date that the work of building and erection of the Pproject is substantially complete as certified by the applicant.~~ For expanded use projects this date will be the same as the date of completion of project implementation.
- ~~(fg) “Contingency” or “contingencies” means the amount budgeted for unforeseen costs.~~ The contingency amount estimated in the CWSRF application can be used to

pay for eligible change orders approved by the Division. Contingencies are subject to credit review and approval by the Division. Design-Build

~~(1) —“Best Value”, also known as “greatest value”, means any selection process in which proposals contain both process and qualitative components, and award is based upon a combination of price and qualitative considerations.~~

~~(2) —“Design-Build” means the system of contracting under which one entity performs both architectural design/engineering and construction under a single contract with the owner. Also known as “design-construct” or “single responsibility” or “Turn Key.”~~

~~(3) —“Design-builder” means the entity contractually responsible for delivering the Project design and construction.~~

~~(4) —“Design-Build Bid Proposal” means a document submitted by pre-qualified Design-builders in response to the Request for Design-Build Proposal and which contains cost, design factors and usually, function, layout, materials, aesthetics, construction techniques, and specifications.~~

~~(5) —“Honorarium” means a stated amount sometimes paid to unsuccessful Design-builders in consideration for preparing a Design-Build bid proposal in response to the owner’s Request for Design-Build Proposal.~~

~~(6) —“Request For Design-Build Qualifications” means the document issued by the owner prior to a Request for Design-Build Proposal to determine whether a firm is fundamentally qualified to compete for a certain project or class of projects.~~

~~(7) —“Request For Design-Build Proposal” means the document issued by the owner to solicit design and construction services proposals from the pre-qualified Design-builders and that contains the project objectives, project design criteria, site information, contract requirements, selection procedure and proposal (submittal) requirements.~~

~~(g) —“Disadvantaged Community” (DAC) means a community with a population of less than 20,000, and either: (1) a statewide community Median Household Income (MHI) of less than eighty percent (80%) of the statewide MHI; or (2) a community sewer rate of more than four percent (4%) of the community’s MHI.~~

(h) “Division” means the Division of Financial Assistance within the State Water Board or other Division assigned to manage the CWSRF Program, or any other Division of the State Water Board authorized to administer the CWSRF Program.

(i) “Eligible Project ~~Project~~ Cost” means that portion of the total cost of a Pproject that is eligible for financial assistance from the Clean Water State Revolving Fund~~CWSRF~~ pursuant to federal and Sstate laws, rules, regulations, policies, and guidelines.

- (j) “Environmental Documents” means either an Categorical Exemption, Initial Study and Negative Declaration, Mitigated Negative Declaration, or an Environmental Impact Report (EIR) prepared in accordance with ~~the California Environmental Quality Act (CEQA)~~ and associated supporting documents that showing compliance with federal environmental laws.
- (k) “Estuary Enhancement Project” means a Project that implements a Comprehensive Conservation and Management Plan established in accordance with Section 320 of the federal CWA.

~~(l) “Excessive Infiltration/inflow” means a flow rate in excess of acceptable threshold values as defined by Section IX.A.5 of this document.~~

(m) “Executive Director” means the Executive Director of the State Water Board.

(m) “Existing debt” means the applicant’s existing debt secured by the Pledged Revenues and Funds (PRF).

(n) “Expanded Use Project” means a project in one of the following categories:

- Storm Water Projects as long as they are not required as part of a National Pollutant Discharge Elimination System permit
- Implementation of a Nonpoint Source Project
- Development & Implementation of Estuary Comprehensive Conservation and Management Plans

(o) “Extended Term Financing” or “ETF” means financing for a term exceeding twenty (20) years but no longer than thirty (30) years, meeting the conditions and restrictions set forth by the United States Environmental Protection Agency (USEPA.) (see See Appendix GA.)

~~(n) “Executive Director” means the Executive Director of the State Water Resources Control Board.~~

~~(o) “Facilities Plan Approval (FPA)” means approval by the Division of the Project concept being proposed by the applicant.~~

~~(p) “Federal Clean Water Act” means the Federal Water Pollution Control Act (33 U.S.C.A. 1251 et seq.), including any amendments thereto.~~

(qp) “Financial distress” or “financial emergency” means that a community has filed for bankruptcy protection in federal court or has taken either of the preliminary actions for bankruptcy protection pursuant to section 53760 of the Government Code. (See Appendix A.)

(q) “Financing Agreement” means the written agreement signed by all parties and any amendments thereto, between the State Water Board and the applicant, in which the setting forth the terms, provisions, and conditions governing the CWSRF financing are stated and the repayment, if any. This document may be a loan, an installment sale agreement, a grant, or another

financing instrument.

- (r) ~~“House Lateral” means the sewer pipe from the public right-of-way to the residential, commercial, institutional, or industrial structure.~~
- (s) ~~“Housing Element” is one of the seven mandatory elements of a General Plan required by Government Code Section 65302.~~
- (tr) ~~“Infiltration” means theis ground~~water entering a sewer system ~~dueincluding that from service connections, from the ground, through such means as, but not limited to,~~ defective pipes, pipe joints, connections, ~~or~~ manhole walls, ~~or similar defects~~. Infiltration ~~does not include, and is distinguished distinct~~ from inflow.
- (u) ~~“Infiltration/Inflow” means the total quantity of water from both infiltration and inflow without distinguishing the source.~~
- (v) ~~“Infiltration/Inflow Analysis” means a study to demonstrate the nonexistence of possible existence, of excessive Infiltration/Inflow in each sewer system tributary to the treatment works.~~
- (ws) ~~“Inflow” meanis the water discharged entering into~~ a sewer system ~~including that from service connections, such as, but not limited to,~~ roof leaders, cellars, yards and area drains, foundation drains, cooling water discharges, drains from springs and swampy areas, manhole covers, cross connections from storm sewers and combined sewers, catch basins, storm waters, surface runoff, street wash waters, ~~or~~ drainage, ~~or similar sources~~. ~~Inflow t does not include, and is distinguished from, is distinct from~~ infiltration.
- (xt) ~~“Initiation of Construction” or “Implementation” means the date that the Notice to Proceed with the work is issued for the Pproject, or if theno notice is not required, the date of commencement of building, and erection, or implementation of the Pproject.~~
- (yu) ~~“Intended Use Plan” or “(IUP)” is themeans the annual document that the State Water Board submits to USEPA that outlines contains the the State Water Board’s business plan for the CWSRF Program for the State Fiscal Year (SFY). and In particular it identifies the projects that the State Water Board expects to fund during the SFYyear.~~
- (z) ~~“Land Use Element” is one of the seven mandatory elements of a General Plan required by Government Code Section 65302.~~
- (aay) ~~“Nonpoint Source Pproject” or “NPS project” means any programs, devices, methods, or systems used for to preventing, abateing, reduceng, transporting, separateng, storeng, treateng, recycleng, or disposeng of pollutants from nondistinct, unconfined sources, including return flows from irrigated agriculture consistent with the NPS Implementation Plan.~~

~~(ab) “Preliminary Funding Commitment” means an action by the State Water Board or one of its designees approving and reserving funds for a Project.~~

(aew) “Operating Agreement” means the *Operating Agreement between the California State Water Resources Control Board and the United States Environmental Protection Agency Region IX for Activities and Functions in Managing the State Water Pollution Control Revolving Fund Program*, dated November 2012. (See Appendix B)

(x) “Publicly Owned Wastewater Treatment Works” or “POTW Project” means any distinguishable segment, or segments, of a publicly owned wastewater treatment facility or treatment works described in the approved financing agreement~~facilities plan~~, which can be bid separately, and for which CWSRF financial assistance is ~~being requested~~sought or provided.

(y) “Private lateral” means a sewer pipe from the public right-of-way to a residential, commercial, institutional, or industrial structure.

(z) “Project” means the Expanded Use or POTW project for which CWSRF financing is sought or provided.

~~(ad) “Project Completion” and “Initiation of Operation” mean the date that operation of the treatment facility is initiated, or is capable of being initiated, whichever comes first as certified by the applicant.~~

(aea) “Project List” means the list prepared pursuant to section 603(g) of the CWA.

(ab) “Reclaimed Water” or “Recycled Water” means water which, as a result of treatment of waste, is suitable for a direct beneficial use or a controlled use that would not otherwise occur and is therefore considered a valuable resource.

(ac) “Recipient” means an applicant with an executed CWSRF financing agreement signed by all parties.

(afd) “Refinancing” means the use of CWSRF monies to ~~refinance~~payoff debt related to an otherwise eligible CWSRF project and provide CWSRF financing in its place~~local external borrowings (borrowings from outside the local agency for eligible Projects).~~

(age) “Regionalization” means the merging of existing sewage collection and/or wastewater treatment systems to provide consolidated collection and treatment to reduce costs, increase reliability, or decommission facilities. (See Appendix A)

(af) “Regional Water Board” means the appropriate California Regional Water Quality Control Board.

(ahg) “Sewer System Evaluation Survey” means a systematic examination of the sewer system to determine the specific location, estimated flow rate, methods

of rehabilitation, and cost of rehabilitation versus cost of transportation and treatment for each defined source of Infiltration ~~/or~~ Inflow.

- (ah) “Small Community Grant” or “SCG” means a grant funded by the charge authorized by Section 13477.6 of the California Water Code. Revenues from the SCG charge are utilized for grants to SDACs (see definition ai) for wastewater projects.
- (ai) _____ “Small Disadvantaged Community” or “SDAC” means a community with a population of less than 20,000, and either: (1) a community Median Household Income (MHI) of less than eighty percent (80%) of the statewide MHI; or (2) a community sewer rate of more than four percent (4%) of the community’s MHI.
- (aj) _____ “State Water Board” means the California State Water Resources Control Board.
- (ak) “Storm ~~water Drainage~~-Project” means any programs, devices, methods, or systems used ~~for to~~ preventing, abating, reducing, transporting, separating, storing, treating, recycling, or disposing of pollutants arising or flowing in storm drainage that is transported in pipes, culverts, tunnels, ditches, wells, channels, conduits, from urban or rural areas to surface or ground-waters of the ~~S~~state and the reuse or disposal of storm water determined acceptable for reuse or disposal.
- (al) “Sustainability” means balancing economic, environmental, and social factors in an equitable manner to maintain and protect the water resources needs of the present generation without compromising the ability of future generations to meet their own water resources needs.
- (am) “Treatment ~~F~~acilities” or “~~T~~treatment ~~W~~orks” means any devices ~~and-or~~ systems used in the storage, treatment, recycling, ~~and-or~~ reclamation of municipal sewage or industrial wastes of a liquid nature to implement the federal CWA, or necessary to recycle or reuse water at the most economical cost over the estimated life of the facilities, including intercepting sewers, outfall sewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; and elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; ~~and-~~ In addition, “treatment facilities” means any other method or system ~~for~~ preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.
- (am~~n~~) “Useful ~~L~~ife” means the estimated period of time over which the ~~CWSRF-~~ funded facilityies will serve ~~their-its~~ intended purpose in a cost-effective manner from the estimated ~~Project-i~~nitiation of ~~o~~Operation date.
- (a~~n~~o) “USEPA” means the United States Environmental Protection Agency.

~~“Water Quality Assessment” means a report prepared by the State Water Board to identify the water quality conditions in the waters of the State.~~

~~(ao) “Water Quality Control Plan” means a State Water Board approved plan adopted pursuant to Division 7 of the Water Code designating or establishing beneficial uses and water quality objectives for water within a specified area and a program of implementation needed to achieve these objectives.~~

IV. PRIORITY SYSTEM AND INTENDED USE PLAN PROGRAM MANAGEMENT

~~The primary purpose of this section is to implement a Priority System and Intended Use Plan for providing CWSRF funding assistance for the planning, design, and construction of wastewater treatment, nonpoint source, storm drainage, water recycling, and estuary enhancement Projects and programs eligible under Title VI of the CWA.~~

A. Development of Regional Water Board Recommendations

- ~~1. Annually, each Regional Water Board Executive Officer shall be consulted regarding Projects in the Region for the Statewide Project Priority List (Statewide List).~~
- ~~2. Results of these consultations shall be transmitted to the Division each year by the scheduled date set by the Division. The Division shall not place a Project on the Statewide List unless the Regional Water Board Executive Officer concurs.~~
- ~~3. The Regional Water Board Executive Officer shall not unreasonably deny the inclusion of a Project on the Statewide List. The Executive Officer shall provide any reasons for denial in writing to the State Water Board. An applicant denied inclusion on the Statewide List by the Executive Officer may appeal to the State Water Board to have its project included on the Statewide List at the time the Statewide List is adopted by the State Water Board.~~

A. B. Development of Statewide Project Priority List

~~The primary purpose of the Project List is to identify potentially eligible future projects and prioritize the marketing, assistance, and application review efforts of Division staff and management. A project must be included on the current Project List to be approved for financing per section XI.A of this Policy. Placement of a project on the Project List shall not constitute a commitment to provide financing.~~

1. Development of Project List

- ~~a. The Project List identifies projects potentially eligible for assistance from the CWSRF program. As the Division receives CWSRF applications or inquiries from applicants, it will assign to each project a Project class from~~

section IV(A)(2) and Sustainability points from section IV(A)(3). The Division will recommend to the Executive Director, in consultation with the appropriate Regional Water Board, if necessary, whether the project should be added to the Project List.

b. The Executive Director will generally update the Project List quarterly. The Executive Director may update the Project List more frequently if necessary or less frequently if there are no new potential projects to be added during the quarter. The Division will promptly post the Project List on the web after the Project List has been updated by the Executive Director.

~~Annually, after review of the Executive Officers' recommendations, the State Water Board shall adopt a Statewide List. The Statewide List shall identify those Projects for which assistance from the CWSRF Program is expected during the succeeding five-year planning period.~~

~~1. The Statewide List shall be adopted by the State Water Board by June 30 of each year.~~

~~2. The fundable portion (first year) of the Statewide List shall include all Projects, which have received a preliminary funding commitment and are scheduled for a financing agreement during the first year of the five-year planning period. Projects receiving a preliminary funding commitment during the fiscal year shall be automatically moved to the fundable portion (first year) of the Statewide List provided the Project is scheduled to receive a financing agreement in the current fiscal year. The extended portion of the Statewide List shall include those Projects without a preliminary funding commitment and those scheduled for a financing agreement during the following four years. Placement on the extended portion of the Statewide List will be based on Project schedules.~~

~~3. Placement of a Project on the Statewide List shall not constitute a commitment to provide financial assistance.~~

~~1.2.~~ C. Priority Classes

Each ~~P~~project shall ~~be~~ assigned to one of the following priority classes:

~~1a.~~ Class A -- Public Health Problems:

~~i.a)~~ POTW ~~P~~projects or other projects ~~ublicly Owned Wastewater Treatment Facilities~~ required to alleviate public health problems where the County Board of Supervisors, City Council, or the County Health Officer has certified that a health problem exists, and where a State or Regional Water Board has (1) adopted a prohibition for elimination of discharges ~~from individual treatment systems~~ and such prohibition has been approved by the State Water Board, ~~or~~ (2) approved a local moratorium prohibiting the construction of new ~~individual~~ systems ~~(See Appendix C)~~, or (3) adopted a cease and desist order; or

~~ii.~~ b) ~~N~~nonpoint source, storm water drainage pollution, and estuary enhancement ~~P~~projects required to comply with prohibitions,

postings, limitations, or warnings that have been imposed by responsible health authorities, and where the State or Regional Water Board has concurred with the findings of the health authority and has established a time schedule for correction or elimination of the threat to public health.

2b. — Class B -- Pollution of Impaired Water Bodies-

Projects required to correct conditions where the Regional Water Board Executive Officer certifies that the water quality objectives for ~~an~~ impaired-water body listed on the CWA 303(d) list are not being attained.

3c. — Class C -- Compliance wWith Rrequirements or Water Recycling Projects-

i. 1) — Projects necessary to comply with Waste-Discharge

Requirements (WDRs) or other regulatory requirements formally imposed by the State Water Board or Regional Water Board, or Pprojects necessary for correction of threatened violations of existing or proposed WDRs; or

ii. P2) — Projects that provide for treatment and delivery of municipal wastewater or groundwater contaminated due to human activity, for uses that will offset or augment Sstate and Llocal Wwater Ssupplies or Pprojects that are necessary to meet state policy regarding recycled water.

d. 4. — Class D -- Projects Serving as Preventative Measures Against Aadditional -Water

-ter Quality Degradation for Impaired or Unimpaired Water Bodies-

Projects which would to control discharges to impaired or unimpaired waters, where correction of such discharges may, or may not, be required through formally adopted WDRswaste-discharge requirements. This cClass includes Pprojects to provide additional wastewater treatment capacity.

5e. — Class E -- Other Projects-

Projects not included in any of the other priority eclasses.

3. Sustainability

A project that supports or incorporates one or more of the following sustainability goals receives one priority point for each area addressed:

a. The project supports infill development or results in the reuse or redevelopment of land in an area presently served by transit, streets, water, sewer, and other essential services.

b. The applicant maintains a capital improvement plan, an asset management plan, or has performed a full-cost pricing analysis.

- c. The project protects environmental or agricultural resources such as farm, range and forest lands; wetlands and wildlife habitats; recreational lands such as parks, trails, and greenbelts; or landscapes with locally unique features or areas identified by the state as deserving special protection.
- d. The project is cited in one or more regional environmental management plans.
- e. The project incorporates wastewater or storm water/urban runoff recycling, water conservation, energy conservation, low impact development, or reduced use of other vital resources
- f. The project uses low-impact treatment for lower lifecycle operating costs through reduced energy, chemical, or other inputs.

~~D.~~ Project Ranking

~~The State Water Board will determine which classes are fundable. Projects within fundable Priority Classes shall be funded based on readiness to proceed.~~

~~2.~~

~~3.4.~~ E. ~~Restrictions and Adjustments~~

~~a. 1.~~ If a Pproject falls in more than one priority class, the Executive Director will place the full Pproject shall be placed in the highest priority class applicable to the more costly segment of the Pproject, except unless as specifically ordered directed otherwise by the State Water Board.

~~a.b.~~ In the event that project classification or sustainability points changes in between updates to the Project List, the Executive Director will adjust the classification in the next update.

~~4. 2.~~ If the priority classification of a Project is in any way dependent upon State, County, or local action, or upon State Water Board or Regional Water Board action, only action taken prior to the adoption or amendment to the Statewide List will be considered.

~~5.~~

~~6. 3.~~ The Statewide List may be adjusted or amended by the State Water Board or the Executive Director for good cause.

~~7.~~

~~8. 4.~~ The State Water Board reserves the right to transfer Projects from one priority class to another priority class, to reduce the eligible cost of any Project, and to allocate available funds among one or more priority classes when the State Water Board determines such action to be necessary or appropriate for effective and equitable use of available monies. Such action will only be taken after notice and opportunity for public comment.

~~9.~~

~~10.5.~~ When appropriate, the State Water Board may create a set-aside for the purposes of assuring that CWSRF assistance will be available for select

~~types of Projects and programs contained on the fundable portion of the Statewide List.~~

~~11.~~

~~12.5. F. Funding of Projects~~

~~The Division will review Pprojects on the Project List with complete applications on the fundable portion of the Statewide List will receive financing agreements and will be executed by the State Water Board, except as may be directed by the State Water Board, based on the project class, A being the highest class and E being the lowest class, on an as ready to proceed with construction basis and the number of sustainability points. Projects within each project class will be ranked according to their sustainability points. If the State Water Board lacks insufficient funds are available for to fund all projects with complete applications seeking funding, then the Division shall will first fund projects based on the Priority cClasses established above, giving priority within the cClass to the disadvantaged communitySDAC with the lowest median household income. If the above factors are comparable, and then to the project that most effectively addresses sustainability and global climate change shall be funded first.~~

~~13.6. G. Project Additions, Removals and Changes~~

~~a. The Division shall will monitor progress of Pprojects-projects on the Statewide-Project List to assure-ensure that applicants and potential applicants are proceeding expeditiously with their Pprojects.~~

~~a.b. The Executive Director will remove any project from the Project List when: If applicants do not proceed with project construction or request that a Project remain on the Statewide List within five years of initial placement on the list, the Project will be removed from the list.~~

~~b. The Division may add a Project to the fundable portion of the Statewide List, provided the Project has received a preliminary funding commitment and will receive a CWSRF financing agreement within the fundable year. The Division may remove a Project from the fundable portion of the Statewide List if the applicant is no longer projected to receive a financing agreement in the fundable year.~~

~~c.~~

~~d. Projects shall not be removed from the Statewide List unless:~~

~~i. 1. The State Water Board so instructs;~~

~~ii. 2. The Pproject has received CWSRF financing or is otherwise completealternate financingd;~~

~~3. The Regional Water Board so requests and the State Water Board or the Executive Director concurs;~~

~~iii.~~

~~iv.iii. The applicant so requests and the State Water Board or the Executive Director concurs to be removed; or~~

~~iv. The project has been on the list for at least four consecutive quarters and the applicant has been non-responsive or has not requested that the project remain on the Project List.~~

~~c. Projects that were removed because applicants were non-responsive may be added again in the future.~~

~~4. The Project has been listed on the Statewide List for at least five years and the Agency has not submitted an application or requested that the Project remain on the Statewide List.~~

~~A.B.~~ H. Intended Use Plan and Capitalization Grant Applications

~~1. 1. At least annually the Division shall will prepare an Intended Use Plan IUP for the State Water Board's consideration for delivery to the USEPA in accordance with federal rules. The State Water Board may establish various requirements/conditions/incentives in the IUP. The IUP will discuss the availability of extended term financing, principal forgiveness, and the application of financing service charges and information necessary to satisfy USEPA's review. The Intended Use Plan shall be adopted by the State Water Board by June 30 of each year. The Executive Director may amend the Intended Use Plan IUP for good cause after public review.~~

~~2. The Executive Director may apply for and accept Capitalization Grants and approve amendments to the Capitalization Grants.~~

~~1-3. The State Water Board may reserve funds for selected classes or types of projects.~~

~~2. The Executive Director may apply for and accept Capitalization Grants and approve any amendments to the Capitalization Grants.~~

C. Interest Rate and Other Charges

1. Generally, the interest rate for CWSRF financing agreements is one-half the most recent general obligation bond rate obtained by the State Treasurer's Office as of the date that the Division prepares the financing agreement or the State Water Board approves the financing, whichever is first, rounded up to the nearest 0.1 percent.

2. Each year in the IUP, the State Water Board sets any administrative service charge, Small Community Grant (SCG) funding charge, and incentives. The administrative service charge provides funding for administration of the CWSRF Program, and the SCG funding charge provides a source of grant funding for SDAC wastewater projects. Where a financing agreement includes any such charge, the interest is correspondingly reduced so that the combined payment of principal, interest, and charge(s) is the same regardless of whether a charge is applied.

D. Annual Report

The Division will prepare an Annual Report for USEPA that describes how the CWSRF Program met the objectives identified in the previous year's IUP.

V. **MATCH FINANCING**

~~The CWA requires the states~~State of California ~~to must~~ provide a match equal to 20 percent of the federal Capitalization Grants ~~in order to receive federal monies.~~ The State Water Board may offer a reduced interest rate to applicants that provide this match funding.

A. Availability

~~Applicants may contribute match and receive match financing. The State Water Board may offer match financing to meet CWA requirements. The State Water Board will determine whether to offer match financing at least once e time each per year whether to offer match financing. This determination will normally be made, normally~~ in the ~~CWSRF Program IUP.~~

~~The following requirements, in addition to all other requirements in this CWSRF Policy, apply to new CWSRF financing agreements where the applicants are providing match:~~

B. ~~A.~~ Match Resolution

~~1.—An applicant electing seeking match financing to participate in the program must submit a to the Division an acceptable resolution passed by the local applicant's governing body, stating the applicant's intent to provide the match in the amount and at the times necessary to complete the project. Appendix C contains a model resolution is included in Appendix N.~~

~~2.—The resolution must state the applicant's intent to provide the match in the amount and at the times necessary to complete the Project.~~

~~3.—The resolution must include a commitment to provide the match for administrative services of 0.575 percent of the total eligible Project costs to cover the cost of obtaining the administrative match. The fee will be waived if sufficient funds are available to make the administrative match from other sources.~~

C. ~~B.~~ Match Terms

The interest rate on match financing agreements ~~will~~shall be zero (0) percent. The payment period is 20 years, or up to 30 years for ETF. The principal amount of the financing agreement includes both the amount received from the State Water Board and the match contributed by the recipient. Planning, design, and expanded use financing agreements cannot use match financing.

D. ~~C.~~ Match Disbursements

1. ~~1.~~ Allowances (~~S~~soft ~~e~~Costs)

~~The R~~ecipient ~~must s~~ are required to certify that it has paid at least the match portion (16.67 percent) of the incurred allowance costs ~~have been paid~~. The Division will then disburse the remainder of the allowance requested (83.33 percent).

1.2. ~~2.~~ Construction or Equipment Procurement Costs

~~The R~~ecipients ~~must~~ are required to pay the match for each construction contractor's or vendor's invoice (16.67 percent of each invoice), or it can.

~~As an alternative, recipients may pay the contractor(s) or vendor(s) the full eligible amount of the contractors' or vendors' invoices until they it have has paid an amount equal to the match portion of the financed amount (16.67 percent of the financed amount). After full payment of the match to the contractor(s) or vendor(s), the recipients may request the remainder of the CWSRF financ~~ing amount (83.33 percent of the financed amount) ~~from the CWSRF~~.

2.3. ~~3.~~ Match Certification and Assurances Documentation

~~The recipient must submit to the Division C~~certification of payments to the contractor(s) or vendor(s) ~~must be submitted to the Disbursements Unit~~. The Division will disburse 83.33 percent of the eligible financing amount, provided the recipient has certified that all past disbursements have been paid to the contractors or vendors and submitted copies of the canceled checks or other documentation of payment acceptable to the Division, on a quarterly basis, documenting payment of CWSRF funds disbursed from the CWSRF and the match amounts to the contractors or vendors.

VI. REFINANCING

A. ~~A.~~ Existing ~~Disadvantaged Community (S~~SDAC) Debt

1. ~~A DAC may use CWSRF funds to refinance local debt that was incurred for existing facilities that fall within any of the five CWSRF priority classes identified in this Policy.~~ Existing non-CWSRF debts may be refinanced with CWSRF funds if the Division determines that all of the following conditions exist:

(a) ~~1.~~ That the community applicant is a SDAC;

(b) ~~2.~~ The local applicant's debt was incurred for an eligible CWSRF project to construct or repair an existing facility ies that falls within any of the five CWSRF Priority eclasses discussed in section IV above in the CWSRF Policy;

(c) The existing debt(s) were the result of external borrowing by the applicant;
and

(d) 3. That rRefinancing the debt is necessary to complete a new Pproject in any of the five CWSRF Priority ec classes at a payment that is affordable for the ecommunitySDAC.

2. Refinancing for projects completed after October 30, 2009, must comply with Davis Bacon requirements. (See section XI(B)(6) of this Policy) Projects completed after October 30, 2009, that did not comply with Davis Bacon are not eligible for refinancing.

B. B. Bridge Financing

Any recipient, not just DACs, that has relied on short term or bridge financing may use CWSRF funds to pay off such short term debt provided funds are available to the Division for this purpose. Refinancing for Financially Distressed Communities

The State Water Board may provide ETF to restructure existing CWSRF obligations, consistent with USEPA's approval, for financial distress or financial emergencies, as further discussed in Appendix A.

VII. WATER RECYCLING AND SDAC PROJECTS

A. Applicable Policies

A. Water recycling Pprojects generally serve one of two purposes: (1) meeting pollution control needs as specified in waste discharge requirements issued by the Regional Water Board or (2) meeting water supply needs. The State Water Board will fund CWSRF Wwater recycling Pprojects that meet pollution control needs are funded in accordance with the this CWSRF Policy, while and Pprojects meeting water supply needs are funded in accordance with must also meet the requirements of the Water Recycling Funding Program (WRFP) Guidelines. (See Appendix D)

A.B. The State Water Board funds SDAC wastewater projects in accordance with this Policy. Any incentives available to these projects, including extended term financing, principal forgiveness, or grants available as a result of the SCG charge, are described in the CWSRF IUP.

Water recycling Projects are placed in Priority Class C as Projects that provide for treatment and delivery of municipal wastewater or groundwater contaminated due to human activity, for uses that will offset State and Local Water Supplies, or Projects that are necessary to meet state policy regarding recycled water.

B. Multiple Purpose Projects

~~A water recycling Project may be a multiple-purpose Project, serving both water pollution control needs and water supply needs. However, the facilities associated with each purpose must be evaluated and the eligibility of facilities determined in accordance with the applicable provisions of either the CWSRF Policy or the WRFP Guidelines.~~

~~There are two types of multiple-purpose water recycling Projects:~~

- ~~1. Water recycling facilities for water supply purposes may be proposed to be constructed simultaneously with wastewater treatment and disposal facilities that could meet discharge requirements without the water recycling facilities. The WRFP Guidelines would be applied to the water recycling facilities component of the Project.~~
- ~~2. In other cases, water recycling may be an inseparable part of the facilities needed to meet discharge requirements but may be justifiable only by considering both the pollution control and the water supply benefits. In this case, appropriate provisions of the CWSRF Policy and the WRFP Guidelines will be applied.~~

VIII. APPROVAL OF PLANNING/DESIGN FINANCING

An applicant must submit all documents noted below, unless otherwise authorized by the Division for good cause, to obtain financing under this section. The Division may require that the applicant submit additional information or certifications necessary to ensure that the financing complies with state and federal requirements. Appendix E contains the application for planning/design financing.

A. Planning/Design Application Requirements

To obtain a planning financing agreement, an applicant must submit to the Division: 1) a Plan of Study; 2) legal documents; and 3) financial documents. If the applicant intends to refinance the planning/design financing principal as part of a CWSRF construction/implementation financing agreement, then the Plan of Study must ensure development of all documents necessary for construction or implementation financing approval. (See Section IX or X of this Policy.) All planning/design work identified in the scope of an executed planning/design financing agreement must be completed prior to approval of a construction or implementation financing agreement.

The application for planning/design financing must include the following two packages:

1. Technical package consisting of the following:

a. The Plan of Study must include the following elements:

i. Explanation of water quality problem to be addressed (including information about existing or pending enforcement actions);

ii. Scope of Planning Work;

iii. Planning-Budget;

iv. Planning-Schedule (including deliverables and submittal dates);

v. If the Plan of Study includes design work, it should explain the status of planning work; and the Division may request to review existing planning documents prior to approving design financing; and

b. Water Rights (See section IX(B)(2)(a)(i) of this Policy for requirements.)

c. Urban Water Management (See sections IX(B)(2)(c)(ii)(A) and IX(B)(2)(c)(ii)(C) of this Policy for requirements.)

1. The Financial Security package consists of the following:

2.

3. If the applicant intends to refinance the planning financing principal as part of a construction financing agreement (which may include soft costs for design, administration, etc., per Section X.B) with the CWSRF (see Section VIII.C.2), then the Plan of Study shall include development of all planning documents necessary for construction financing approval (see Section IX).

4.2.

The following legal documents must be submitted to the Division:

Legal Authority: The applicant

a. Authorizing resolution/ordinance: The applicant must submit a resolution or ordinance adopted by its governing board authorizing the application and designating an Authorized Representative (by title) to sign the CWSRF financing agreement and make other certifications.

b. Relevant service, management, operating, or joint powers agreements: The applicant must provide a copy of any relevant service, management, operating, or joint powers agreements for the proposed project with a summary explanation of the shared financial and management responsibilities of the parties.

shall cite the statute that authorizes the applicant to enter into the financing agreement requested and provide contact information for the applicant's legal counsel for follow up questions from State Water Board legal counsel.

c. Financial statements and security: The applicant must provide three years of financial statements, preferably audited. The financial statements may include the current year (if available), and two years prior, or the three previous years if the current year's statements have not been completed.

d. Legal Opinion(s):

i. The applicant will be expected to submit an opinion from counsel regarding the validity of the financing agreement and the supporting resolutions, lack of conflict and affirmative compliance with applicable

laws and material obligations, pending or existing litigation or disputes, and lack of untrue, misleading, or incomplete representations.

- ii. Where the applicant has material bond debt, the applicant will be expected to submit an opinion from bond counsel regarding lack of conflict between the CWSRF financing agreement and the material bond obligation.
- iii. The applicant must address any pending litigation, contractual or ratepayer/taxpayer disputes or adverse findings by outside auditors (including commercial and government auditors, grand juries, or other similar entities acting in a formal capacity) that may detrimentally affect the applicant's payment source, the ability of the applicant to agree to or pay the CWSRF financing or manage and implement the project financed by the CWSRF Program.
- iv. Any issues related to the above, including but not limited to rate setting, litigation, audit findings, disputes, and property rights, where relevant to the project security, or the applicant's commitments under the CWSRF financing agreement are expected to be resolved prior to execution of the CWSRF financing agreement and may require State Water Board approval of the financing.

e. Pledged Revenue and Funds (PRF) resolution/ordinance: This item is not required if the applicant is a SDAC applying for one hundred percent grant funding. All other applicants must submit a resolution or ordinance adopted by the governing board that pledges one or more sources of existing revenue and funds as security for the CWSRF financing agreement. A reserve fund may also be required. (See Appendix E of this Policy for sample resolution.)~~Agency Resolutions: Agency Resolutions are required authorizing the application, the financing amount (at the option of the applicant), and designating an Authorized Representative (a named individual or position title at the option of the applicant) to sign the agreement and make other certifications~~

~~Joint Powers Agreement: The applicant shall provide a copy of any Joint Powers Agreement for the proposed Project with a summary explanation of the shared financial and management responsibilities of each Agency.~~

- i. A PRF may be a special tax, user fees, or a special assessment, provided that the applicant has the authority to control and pledge the PRF.
- ii. The applicant's governing board must adopt the ordinance or resolution pledging the PRF before approval of the CWSRF financing.

f. Existing debt:

- i. If the applicant has no other debts, this fact must be verified by the Agency's Authorized Representative.

- ii. This item is not required if the applicant is a SDAC applying for one hundred percent grant funding.
- iii. The applicant must submit a schedule of all debt secured by the PRF. It must also submit a copy of each relevant debt document (e.g. Indenture, Installment Agreement, loan, note, etc.). The CWSRF financing agreement will include this schedule as an exhibit, identifying the priority position of each debt in relation to the proposed CWSRF obligation (senior, parity, or subordinate). In most cases, the proposed CWSRF debt will be a senior obligation.

i.

1. ~~The Division will perform a credit/legal review to determine the applicant's creditworthiness and recommend a maximum funding amount based on this review. The following is a description of the credit review process, and the related documents an applicant must submit to the Division for planning financing:~~

a. ~~Credit Review Process~~

- ~~• Applicant submits the information noted below.~~
- ~~• The Division will determine the applicant's credit worthiness based on actual/projected revenues.~~
- ~~• The Division will establish a credit limit for the applicant.~~
- ~~• If the applicant's financing cost exceeds the credit limit at any time, the Division staff will work with the applicant to find a way to finance the planning, if feasible.~~

~~All Applicants shall comply with the Credit Review requirements. For all applicants, no bond, loan, or debt defaults may exist as of the date the planning financing agreement is executed. Prior defaults may be grounds for disapproval, depending on the circumstances.~~

b. ~~Credit Review Documents~~

Dedicated Source(s) of Funds

~~§ 603(d)(1)(C) of the Federal CWA requires each financing recipient to establish one or more dedicated sources of revenue for payment of the financing agreement. A dedicated source can be general taxes, user fees, a special assessment, or other acceptable sources.~~

~~Revenue will be considered dedicated when the Agency passes an ordinance or resolution committing a source of funds for payments. The ordinance or resolution dedicating a source of revenue for payment of the CWSRF financing agreement must be adopted by the Agency's governing board before approval of the financing.~~

Ordinance or resolution language equivalent to the following example is acceptable:

~~The (Agency) hereby dedicates the following source of revenue (user charge proceeds or revenue bonds, etc.) to pay any and all Clean Water State Revolving Fund financial agreement(s) on Planning Project No. C-06-xxxx-xxx. This dedicated source of revenue shall remain in effect until such financing agreement is fully discharged unless the State Water Resource Control Board approves modification or change of such dedication in writing.~~

Financial Statements and Security

~~The applicant shall provide three years of financial statements. The financial statements must include current year (if available), and two years prior. Audited financial statements are preferred.~~

~~The applicant shall identify other sources of security if needed for a financing agreement, such as assessments, stocks, surety bonds from an insurance company, or property. If using property, provide an estimate of the value and how the value was determined. Identify whether the security is pledged as security for any other debt obligation.~~

Litigation or Adverse Findings

~~The applicant shall describe any pending or anticipated litigation, contractual or ratepayer/taxpayer disputes or adverse findings by outside reviewers that may detrimentally affect the applicant's payment source, the ability of the applicant to agree to or pay the CWSRF financing or manage and implement the planning financed by the CWSRF Program.~~

Existing Indebtedness

~~For the purposes of the following, "existing debt" means the applicant's existing debt that relies on the same pledged revenue source as the applicant is pledging for payment of the CWSRF financing.~~

~~The applicant shall submit a schedule of existing debt. This schedule will be an exhibit to the CWSRF planning financing agreement and will rank existing debt according to priority in relation to the new, anticipated CWSRF debt (senior, parity, or subordinate). The schedule will list the name of lender, title of debt, debt term, interest rate, total debt amount, remaining debt balance, and debt end date.~~

~~The applicant shall submit a letter from the Agency's bond counsel (in certain circumstances local counsel will be adequate) that:~~

~~Cites the relevant provisions in each of the applicant's existing debt documents listed in the schedule (other than CWSRF debt) that affect its ability to enter into and repay the requested financing. Provides counsel's opinion about whether these conditions have been met, and Provides counsel's opinion about whether these documents preclude the applicant's ability to agree to the CWSRF financing agreement.~~

~~The Division's legal counsel may waive this requirement. If the applicant has no other debt (except other CWSRF debt), the Agency's Authorized Representative must provide a letter stating this.~~

~~For all existing debt (other than CWSRF debt), the applicant shall submit the relevant debt document (loan agreement, bond indenture, etc.) by digital or paper copy. The applicant may be required to submit supplemental materials (Offering Statement, maturity schedules, etc.), particularly in the case of multiple series indentures or large debt loads.~~

~~A.B.~~ B. Eligible Planning/Design Costs

1. Eligible costs include the preparation of ~~wastewater-related~~ planning/_design documents, including, but not limited to:

a. Feasibility Sstudies/Ppproject Rreports

b. Plans and specifications

c. Financial Aanalyses

d. Value engineering

e. Environmental documents
Impact Analyses

f. Capital Improvement improvement Pplans

g. Water Cconservation Pplans

h. Sewer Ssystem Eevaluation/_Ssurveys

i. Environmental Mmanagement Ssystems

~~a.i.~~ Asset Mmanagement Ssystems

~~a.~~

~~2.~~ Ineligible Costs

2.

Planning/design costs incurred prior to the eligible start date of the agreement are ineligible. The eligible start date will be no earlier than the date the planning/design financing application is submitted to the Division.

3. ~~The Applicant must~~ are required to complete the planning process prior to approval of construction/implementation financing ~~funding~~. ~~Design, value engineering, construction management costs,~~ and administration costs associated with ~~the design and construction/~~implementation phases will may be included in the construction financing agreement, and are not eligible for reimbursement under the planning/design financing agreement.

~~B.C.~~ C. — Planning/Design -Financing Terms

1. Draw Period:

a. ~~The draw period shall~~ may be up to ~~be up to~~ three years from the date of the planning/design financing agreement.

b. The Deputy Director of the Division or designee may extend the draw period for good cause.

~~2. The Deputy Director of the Division or designee may approve up to a 180-day extension of an established draw period for good cause.~~

~~3.~~

~~4.2.~~ Interest rate: The interest rate shall be zero (0) percent during the draw period. If the applicant does not refinance the principal as part of a construction or implementation financing agreement, either with the CWSRF or another financing source, then the interest rate will be determined by section IV(C) of this Policy. Interest will accrue from the date of each planning/design disbursement and continue to accrue until the agreement is fully amortized. If the principal is refinanced per section VIII(C)(4), then interest will accrue per section VIII(C)(4)(b).

~~3.~~ Amortization period: Repayments will be amortized by equal annual payments over five or ten years, whichever the applicant selects, unless refinanced per section VIII(C)(4).

~~5.4.~~ Refinancing:

a. ~~At the end of the draw period, the planning/design agreement will~~ may be be amortized per Section VIII.C.4 unless the applicant refinances the principal as part of a CWSRF construction/implementation financing agreement with the CWSRF. The construction financing agreement must be executed prior to the end of the draw period. No refinancing will occur ~~The short term financing cannot be refinanced~~ after the end of the draw period, unless approved by the State Water Board at a State Water Board meeting.

b. Interest will ~~begin to~~ accrue on the planning/design agreement balance beginning the ~~eligible start effective~~ date of the construction/implementation financing agreement per the terms of the construction/implementation financing agreement.

~~1.~~ Interest Rate:

~~The interest rate shall be zero (0) percent during the draw period.
If the applicant does not refinance the principal as part of a construction financing agreement, then interest will be applied at the rate of half the most recent general obligation bond rate obtained by the State Treasurer's Office as of the effective date the planning agreement (rounded up to the nearest 0.1 percent), and continue to accrue at that rate until the agreement is fully amortized.~~

~~6. Amortization Period: Planning will be amortized by equal annual payments over five years unless refinanced to construction financing per Section VIII.C.2.~~

~~7.~~

~~8.5. Future Local/Additional Debt: The applicant's 's additional obligations secured by the PRF must meet the conditions of future debt may not be senior to CWSRF debt. The applicant's future local debt may be on parity with the CWSRF debt if the conditions described in Section IX(B)(4).G of this Policy are met.~~

~~C.D.~~ D. — Planning/Design Financing Approval and Agreement

~~1. It is not necessary for an applicant or a project to~~ A project need not be listed on the Statewide Project List to receive a planning/design financing agreement. For routine, noncontroversial Pprojects, the Executive Director, Deputy Director, or designee, of the Division ~~or designee is authorized to~~ may approve and execute planning/design Financing financing Agreements agreements. Non-routine or controversial projects will be considered by the State Water Board at a State Water Board meeting.

~~1.2.~~ Upon review and approval of required documents, the Division will prepare a financing agreement. The Division will not disburse funds until after the financing agreement is executed, and any disbursements are entirely conditioned on such execution.

~~9. Upon review and approval of required documents, the Division will prepare a Planning Financing Agreement. No funds will be disbursed until after the Planning Financing Agreement is executed. Eligible costs may be disbursed after the planning financing agreement is executed.~~

~~D.E.~~ E. — Planning/Design Financing Disbursements

1. The Division will disburse eligible costs after the financing agreement is executed. Requests for Disbursement may be submitted at any time after execution of the planning financing agreement. Costs submitted to the Division must be currently due and payable, but the recipient need not have actually paid the costs before requesting disbursements. Appendix F contains Sspecific instructions for requesting disbursements ~~are included in Appendix M.~~

2. AThe recipient must submit all draft deliverable(s) must be submitted prior to disbursement beyond 70 percent of the financing amount, and it a must

~~submit all final deliverable(s) must be submitted for the Division approval by the Division~~ prior to disbursement beyond 90 percent of the financing amount.

~~a. If the applicant-recipient intends to refinance the planning/design financing principal as part of a CWSRF construction/implementation financing agreement with the CWSRF, approval of the construction/implementation Preliminary Funding Commitment financing shall act as will constitute Division approval-acceptance~~ of the final deliverable(s).

~~b. For short term financings for the preparation of planning/design documents not refinanced as part of a construction or implementation agreement, the Division will issue a letter accepting completion of the original scope of work, as appropriate.~~

~~2. For short term financings for the preparation of planning documents not directly resulting in a construction project, the Division will issue a Planning Document(s) Approval Letter.~~

~~3.~~

~~4.3. The Division must receive the final disbursement request must be received by the Division~~ prior to the end of the draw period. As a courtesy, the Division will normally send a reminder notice approximately three months before the final disbursement request date (end of draw period), but prompt submittal remains the responsibility of the recipient. If the ~~Division does not receive the~~ final disbursement request ~~is not received~~ prior to the end of the draw period and ~~has not approved an~~ extension of the draw period ~~has not been granted, it will deobligate~~ the undisbursed balance of the CWSRF financing agreement ~~will be deobligated and made available for other projects.~~

~~E.F.~~ F. Planning/Design Financing Payments

~~1. The first annual payment will be due one year following the end of the draw period. As a courtesy, The final annual payment will be due five years following the end of the draw period. T~~he Division will issue a revised payment schedule after the recipient submits an ~~approve~~ceptable final disbursement request.

~~1.2. All payments are to~~must be sent to the address referenced in ~~Section section XVI(E) of this Policy.~~

~~2.3. The recipient will have a ten-day grace period, after which time a penalty may be assessed for late payment. Such penalty may include, but is not limited to, lost interest earnings, staff time, bond debt service default penalties, and other costs incurred. Any such penalties collected will be deposited in the CWSRF account. Penalties assessed will not change the principal balance of the financing agreement. Such penalties will is be treated as a separate~~cified receivable in ~~addi~~section XVI(D)(2) of this annual payment duePolicy.

~~F.G.~~ Planning/Design Financing Record Keeping Requirements

The recipient must maintain records as Record-keeping requirements are described in Section-section XV of this Policy.

IX. APPROVAL OF CONSTRUCTION FINANCING PUBLICLY OWNED TREATMENT WORKS FINANCING

An applicant must submit all ~~planning and financial~~ documents noted below, unless otherwise authorized by the Division for good cause, to obtain ~~a construction financing under this section~~ agreement for its project. The Division may require that the applicant submit additional information or certifications necessary to ensure that the financing complies with state and federal requirements. Appendix G contains the application for construction/implementation financing. Publicly owned treatment works includes all projects meeting the definition of "treatment works" in the CWA (33 U. S. Code § 1293), including but not limited to, wastewater infrastructure such as treatment plants, sanitary sewer systems, pumping stations, force mains, and solids handling equipment; storm water treatment and abatement measures required by a National Pollutant Discharge Elimination System permit and publicly owned; and leachate treatment systems at publicly owned landfills. Applicants should contact the Division for assistance with eligibility determinations.

A. General

- ~~The documents include a Project Report, complete Environmental Documents, Water Conservation requirement compliance documents, general planning documents, credit analysis documents, and other documents shown in Section IX.F~~ The application is organized into four packages: 1) general information, 2) technical, 3) environmental, and 4) financial security. The Division will accept Ppartial packages and applications will be accepted, but will process complete applications will be processed prior teahead of incomplete applications consistent with section IV(A)(5) of this Policy. ~~While early submittal is not a program requirement, it is recommended that applicants.~~ Applicants should submit the complete application for review in advance of the ten percent (10%) design level effort.
- To expedite a financing agreement, the Division will assist applicants with specific program requirements during the application review. The Division may also offer limited assistance to qualified applicants to ensure that they have the ability to bolster their administer administrative and managerial capacity the construction of the proposed Project.
- ~~2.3.~~ To assist potential applicants with financing long-term capital needs, the Division will work diligently with applicants to obtain regular updates and maintain on file reports/plans/documents that fulfill the requirements of this section to minimize the resubmission of information needed for a complete project application.

B. Application Requirements

1. General Information Package

This package includes basic applicant and project information.

2. Technical Package

a. Water Rights

- i. Section 5103 of the Water Code requires water diverters to submit records of water diversions to the State Water Board's Division of Water Rights. If the applicant is not current on these submittals, the Division will not execute a financing agreement or disburse any funds until the reports are submitted unless the Deputy Director determines that (a) the CWSRF financing will assist the applicant in complying with the reporting requirements, and (b) the applicant has submitted to the State Water Board a one-year schedule for complying with the reporting requirement.
- ii. The applicant must provide information to allow the Division to determine whether a petition for change must be filed and approved with the State Water Board's Division of Water Rights for the project.

b. Project Report

The applicant must submit a project report, or its equivalent, that contains the information outlined in Appendix G, as appropriate to the project. Engineering reports must be signed and stamped by a registered Professional Engineer. The contents of the report outlined in Appendix G are not prescriptive, but are intended to provide Division staff with sufficient information to evaluate whether the project is eligible for CWSRF financing, meets applicable technical requirements, and is likely to meet applicable water quality objectives and standards. Division staff may require the applicant to submit additional information to assess the project's ability to meet water quality objectives or plans.

~~A Project Report or its equivalent shall be prepared and submitted as part of the application.~~

~~The Project Report must contain, as appropriate, the following:~~

- ~~1a. _____ A statement of Project needs and benefits, including a discussion of the water quality benefits of the Project and the public health or water quality problems to be corrected.~~
- ~~2. _____ Proposed Project Service Area and composition.~~
 - ~~a. _____ Median Household Income (MHI) and population for the proposed Project service area using census data or the most recent income survey if the census data does not accurately reflect the community's MHI. This information is used to analyze various factors, including affordability.~~

- ~~b. Total number of active wastewater service connections that are currently and directly served by the wastewater collection system. This includes a breakdown by each category for all domestic or residential, industrial, commercial or other connections. A map for the existing wastewater service area for the proposed Project must be provided.~~
- ~~c. The average current monthly wastewater charges by category. If the wastewater system uses a “tiered” rate, the charge should reflect what a typical user pays in each category and the basis of the charges. The rate should reflect direct wastewater charges plus any other fees or charges that support the wastewater service such as parcel fees, standby charges, wastewater taxes, and surcharges.~~
- ~~3. A cost effectiveness and climate change evaluation of alternatives over the useful life of the Project. The evaluations presented must include an evaluation of the alternative of upgrading operation and maintenance of the existing facility to improve effluent quality, and a regional treatment solution.~~
- ~~4. An evaluation of alternative methods for reuse or ultimate disposal of treated wastewater and sludge material resulting from the treatment process. For wastewater treatment Projects producing sludge material, the following information needs to be identified and compared:~~
- ~~a. All landfills within a 100-mile radius that accept sewage sludge;~~
- ~~b. Any composting facilities within a 100-mile radius accepting sewage sludge;~~
- ~~c. The potential for dedicated land disposal;~~
- ~~d. Conversion of sludge to biosolids for distribution as soil amendment or as another agricultural product; and~~
- ~~e. Ultimate disposal methods approved by the Regional Water Boards.~~
- ~~5. An evaluation of the non-existence or possible existence of excessive infiltration/inflow (I/I) in the existing sewer system. If the average daily flow during periods of sustained high groundwater is less than 120 gallons per capita per day (gpcd), a Sewer System Evaluation Survey (SSES) is not required. If it is above 120 gpcd, the applicant must perform a SSES to determine whether it is cost-effective to treat or correct the I/I. If a SSES is not submitted, funding will be based on a maximum flow rate of 120 gpcd. If the peak flow during a storm event (highest three-hour average) exceeds 275 gpcd, a SSES must be completed or funding will be based on a maximum peak flow rate of 275 gpcd. Cost-effective corrections under these criteria are eligible for funding. See Appendix O for further guidance on SSESs.~~
- ~~6. Information on total capital costs, annual operation and maintenance costs.~~
- ~~7. A discussion of the existing population, flows, loadings, and projections of the same, used to estimate the capacity needs for the funded facilities;~~

- ~~8. _____ A discussion of the anticipated eligible capacity for the Project, and how that capacity was derived. (see Section IX.H);~~
- ~~9. _____ A summary of public participation;~~
- ~~10. _____ The following must be submitted for the selected alternative:
 - ~~a. _____ A detailed description of the selected alternative and the complete waste treatment system of which it is a part;~~
 - ~~b. _____ A summary of relevant design criteria (i.e., design flow, peak flows, daily Biochemical Oxygen Demand (BOD) or Chemical Oxygen Demand (COD) loadings, daily suspended solids loadings, overflow rates, detention times, sludge production, etc.);~~
 - ~~c. _____ The estimated construction and annual operation and maintenance costs and a description of the anticipated manner in which all the costs will be financed;~~
 - ~~d. _____ A summary of the cost impacts on wastewater system users. Provide the average projected monthly wastewater charges that will be passed on to wastewater users by category and the basis of the charges during the useful life of the proposed Project. Include any ineligible project costs as well as non-Project-related wastewater system costs that will be imposed on the residential users during the next five years. Also include any income generated by the project, such as income generated by the sale of recycled water;~~
 - ~~e. _____ A summary of the significant environmental impacts of the selected Project and any proposed mitigation measures;~~
 - ~~f. _____ A statement that identifies and discusses the source(s) and the amount of unallocated potable water currently available in the Project service area. If the amount of potable water is less than what is needed to serve the projected population for the proposed Project, a plan identifying how that deficiency will be mitigated shall be presented;~~
 - ~~g. _____ A discussion of facilities that were previously funded by federal/state grants, loans, or other financing, if such facilities are to be repaired or replaced;~~
 - ~~h. _____ A discussion, if applicable, where minority populations are included in the facilities planning area, showing that such areas will be served or excluded from service only for reasons of cost-effectiveness. Applicants must comply with the Civil Rights Act of 1964.~~
 - ~~i. _____ A description of operation and maintenance requirements;~~
 - ~~j. _____ A demonstration that the selected alternative is consistent with any applicable approved water quality management plan;~~
 - ~~k. _____ A summary of public participation; and~~~~

~~l. For existing facilities, the applicant must submit a copy of the current adopted WDRs issued by the Regional Water Board. If there are no existing facilities, the applicant must submit a copy of the tentative WDRs, which must become final before disbursement of costs for construction. Division staff will track the status of the WDRs and may require additional relevant information and updates from the applicant.~~

~~m. Applicants requesting Extended Term Financing must include the following in the Project Report: 1) an assessment of the useful life of the selected alternative; and 2) an affordability analysis, which demonstrates the financing term necessary to make the selected alternative affordable for the community.~~

~~11. A description of how the applicant's Project addresses each of the state planning priorities defined in Section 65041.1 of the Government Code and sustainable water resource management priorities. These are intended to promote equity, strengthen the economy, protect the environment, and promote public health and safety in the state, including in urban, suburban, and rural communities. The state planning priorities and sustainable water resources management priorities as of the date of adoption of this Policy are as follows:~~

~~a. To promote infill development and equity by rehabilitating, maintaining, and improving existing infrastructure that supports infill development and appropriate reuse and redevelopment of previously developed, underutilized land that is presently served by transit, streets, water, sewer, and other essential services, particularly in underserved areas, and to preserving cultural and historic resources;~~

~~b. To protect environmental and agricultural resources by protecting, preserving, and enhancing the state's most valuable natural resources, including working landscapes such as farm, range, and forest lands, natural lands such as wetlands, watersheds, wildlife habitats, and other wildlands, recreation lands such as parks, trails, greenbelts, and other open space, and landscapes with locally unique features and areas identified by the state as deserving special protection;~~

~~c. To encourage efficient development patterns by ensuring that any infrastructure associated with development that is not infill supports new development that uses land efficiently, is built adjacent to existing developed areas to the extent consistent with the priorities specified pursuant to subdivision (b), in an area appropriately planned for growth, is served by adequate transportation and other essential utilities and services, and minimizes ongoing costs to taxpayers.~~

~~d. To encourage sustainable water resources management by ensuring that sustainable water resources measures, such as recycling wastewater, conserving water, conserving energy, and applying Low Impact Development Best Management Practices to the maximum extent practicable. Agencies that are legislatively prohibited from engaging in these activities are exempt from this requirement. Exempt agencies shall provide a statement in their Project Report citing the legislation and what activities are prohibited.~~

~~The information provided in Section IX.A.11 is for information purposes only and is not intended to affect the priority or eligibility of a Project requesting CWSRF funding.~~

- c. Water Conservation and Urban Water Management (See Appendix H for guidance.)
- i. Water Conservation
- (A) If the applicant is a water supplier, the State Water Board will not execute a CWSRF financing agreement until the applicant has adopted a Water Conservation Program consistent with local ordinances and authorities.
- (B) In lieu of adoption of an independent Water Conservation Program, the applicant may:
- (1) Become a signatory to the “Memorandum of Understanding Regarding Urban Water Conservation in California,” September 1991, California Urban Water Conservation Council, which may be modified to suit local conditions, or
- (2) Submit an Urban Water Management Plan per Water Code Section 10653.
- (C) If the applicant is not a water supplier, it must:
- (1) Certify that seventy-five (75) percent of the water connections in its service area are covered by an adopted, Division-approved Water Conservation Program or
- (2) Demonstrate that the water supplier(s) have signed the Memorandum of Understanding, referred to above, covering at least seventy-five (75) percent of the water connections within the applicant’s sewer service area or
- (3) Demonstrate that the water supplier has submitted an Urban Water Management Plan to the Department of Water Resources as discussed above.
- (D) The Division may waive the above Water Conservation requirements if:
- (1) The water supplier(s) for the community serve 3,000 or fewer customers and
- (2) The costs to comply with the Water Conservation requirements are found by the Division to be burdensome to the supplier in light of the benefits derived from the Water Conservation Program.
- (E) The Water Conservation Requirement is not applicable to an expanded use project.

ii. Urban Water Management

(A) The Urban Water Management Planning Act requires every urban water supplier to prepare and adopt an Urban Water Management Plan that includes specific elements. (Water Code §10631.5.) Urban water suppliers, either publicly or privately owned, providing water for municipal purposes either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually are subject to this Act. Applicants that are urban water suppliers must comply with this Act to receive financing.

(B) Effective January 1, 2009, eligibility for any water management project grant or loan made to an urban water supplier awarded or administered by the Department of Water Resources (DWR), the State Water Board, or the California Bay-Delta Authority requires the applicant to implement water Demand Management Measures (DMM) as described in Water Code Section 10631.5. Water management projects include projects that provide surface water or groundwater storage, recycling, desalination, water conservation, water supply reliability, and water supply augmentation. Water Code Section 10631.5 requires that DWR determine if an urban water supplier is implementing water DMM described in Water Code Section 10631. The financing for any water management project will not be approved until such determination is made by DWR.

(C) Volumetric Pricing and Water Metering

(1) Section 529.5 of the Water Code, provides that urban water suppliers must meet certain volumetric pricing and water metering requirements in order to apply for state financial assistance for the following types of projects:

- wastewater treatment projects
- water use efficiency projects (including water recycling projects)
- drinking water treatment projects

(2) For the purposes of compliance with this section, a “water use efficiency project” means an action or series of actions that ensure or enhance the efficient use of water or result in the conservation of water supplies.

(3) All applicants must certify compliance with the water metering requirements.

d. General Plans

- i. If the applicant is responsible for adopting the General Plan(s) for the area(s) affected by a proposed project, the Division may not approve financing for the project until the applicant's authorized representative has certified that the applicant has adopted the land use and housing elements of its General Plan as required by section 65302 of the Government Code and that the project is consistent with the adopted General Plan.
- ii. If the applicant is not responsible for adopting the General Plan(s) for the area(s) affected by the project, then the Division may not approve financing until the applicant's authorized representative certifies that at least seventy-five (75) percent of the area affected by the project includes cities and counties with adopted land use and housing elements. The applicant's authorized representative will also certify that the applicant notified the agency(ies) responsible for adopting the General Plan(s) and provided a reasonable opportunity to comment on the project's consistency with the General Plan(s). The applicant's authorized representative must certify that the applicant considered those comments during development of the project.

3. B. Environmental Impact Analysis Package

a. General

The applicant must provide adequate and complete environmental documentation to allow the State Water Board to fulfill its responsibilities under the California Environmental Quality Act (CEQA) and to meet federal environmental review requirements. In accordance with the Operating Agreement, the State Water Board uses the State Environmental Review Process (SERP) to fulfill these requirements. (See Appendix H.) This process is functionally equivalent to the National Environmental Policy Act (NEPA) and addresses the federal environmental review requirements known as the "federal cross-cutters." (40 CFR, § 35.3145.) It also complies with the CEQA Guidelines.

b. Environmental Analysis Documents

- i. The applicant must provide the final, project-specific environmental document, associated reports, and supporting documents showing compliance with CEQA to receive CWSRF construction or implementation financing approval. An applicant may use a previously prepared CEQA document, provided it is consistent with section 15153, 15162-15164, 15168, or 15221 of the CEQA Guidelines, and the CEQA document provides an adequate project-specific environmental analysis. The environmental documents must analyze the items outlined in the SERP, consistent with regional wastewater treatment plans, basin plans, and plans developed under section 208 of the

CWA. The applicant must provide supporting documentation for the State Water Board to show compliance with federal environmental cross-cutters and to complete federal consultation, if required.

ii. If the applicant certified the environmental analysis document more than five years before the expected date the financing agreement will be executed or if the environmental document does not provide a project-specific environmental analysis, the applicant must re-evaluate the project's environmental conditions in an updated environmental document (e.g., Addendum, Supplemental, or Subsequent environmental document) and complete the applicable public participation requirements. The applicant must provide a copy of the final updated environmental document and the corresponding public participation and notification documents.

c. Document Preparation, Consultation, and Certification

i. The applicant must follow the CEQA Guidelines and complete the CEQA process as a lead or responsible agency, or provide the State Water Board with adequate information for it to complete an environmental analysis if CEQA does not apply to the applicant. If the applicant is a responsible agency under CEQA and is using a lead agency's CEQA document, the applicant must also adopt/certify the CEQA document using the required public process, including the appropriate mitigation measures, and complete its own CEQA findings and determinations.

ii. Early in the planning stage, the applicant should consult with agencies responsible for implementing local, state, and federal statutes and authorities, and incorporate any recommended design features and measures from those agencies into the project. The applicant should also consult with the Division to ensure that it meets all CWSRF environmental requirements. The State Water Board can coordinate consultations with the appropriate federal authorities when an environmental compliance issue arises or with other federal agencies that have roles in approving or financing the project.

iii. If CEQA applies to the applicant, the applicant must submit the draft CEQA document, to the State Clearinghouse within the Governor's Office of Planning and Research for distribution and comment. This requirement also applies to any Addendum, Subsequent, or Supplemental environmental documents of previously prepared CEQA documents.

iv. All applicants, whether lead or responsible agencies under CEQA, if CEQA applies to the applicant, must file either a Notice of Determination or a Notice of Exemption with the State Clearinghouse immediately following the applicant's project approval and adoption/certification of the CEQA document and findings.

d. The State Water Board's Role

- i. The State Water Board is generally a responsible agency under CEQA and will complete its environmental review and make findings and determinations consistent with the CEQA Guidelines and the Operating Agreement based on the adequacy and completeness of the applicant's environmental analysis documents.
- ii. The State Water Board will consider any comments received on the draft CEQA document and will require the applicant to resolve or address any issues that arise from comments. The applicant must resolve all environmental issues, including obtaining the appropriate permits and approvals (i.e., concurrences/approvals under section 7 of the federal Endangered Species Act, section 106 of the National Historic Preservation Act, and sections 401 and 404 of the CWA [permit/certification]) prior to financing approval. The financing agreement may include applicable terms and conditions of the permits and approvals.
- iii. The State Water Board will file the appropriate public notification with the State Clearinghouse following its funding decision for a project.

~~Final Environmental Documents specific to the final Project must meet general requirements of the California Environmental Quality Act (CEQA). Applicants also must meet any specific CEQA requirements that apply where a state agency and/or the applicant is the "responsible agency" as defined in CEQA. Projects may also be required to conduct additional analysis to demonstrate compliance with federal environmental laws. CEQA compliance in many cases will overlap federal environmental law compliance if adequate information is documented and provided through the CEQA process.~~

~~USEPA requires that the CWSRF Program comply with certain federal laws, including environmental laws, (also known as "federal cross-cutters") for an amount of financing equal to the Federal Capitalization Grants received from the USEPA. The State Water Board is allowed to bank the value of financing agreements that have complied with those federal laws over and above the federal Capitalization Grant amount. If the State Water Board determines that sufficient federal cross-cutters have been banked, the Division may apply a Tier II review (CEQA only review) to all projects. An applicant may request a Tier I review (CEQA review and federal agency review) of its project regardless of the Board's determination of federal cross-cutter compliance if it is advantageous to the applicant. If the State Water Board determines that additional cross-cutter compliance is needed, then the Division will conduct a Tier I environmental review on all projects and coordinate with federal agencies or their designated representatives.~~

~~Project applicants shall provide documentation that will allow the Division or the State Water Board to make a CEQA determination as a responsible agency under CEQA (Tier II review), as well as initiate federal consultation (Tier I review), if required. If information necessary for federal consultation (Tier I review) is sufficiently addressed in the CEQA documents, then the applicant shall identify specifically where this information can be found.~~

Detailed environmental review process guidelines, including a flowchart, are contained in Appendix E. At a minimum, the appropriate Environmental Documents shall discuss the items outlined in Appendix E, consistency with regional plans for wastewater treatment and water quality control, water quality control plans (basin plans), and Clean Water Act Section 208 plans.

2. The applicant must submit its draft Environmental Documents (i.e., CEQA documents) to the Governor's Office of Planning and Research, State Clearinghouse for public distribution and comments. The draft Environmental Documents must be distributed for review and comment to other responsible (as defined in CEQA) local and State agencies within the Project's service area. The State Water Board, as a responsible agency, reviews and comments on draft Environmental Documents received from the State Clearinghouse.

It is highly recommended that applicants ensure their draft Environmental Documents are sent to the Division if they have any plans to seek CWSRF financing. Applicants should notify the Division staff directly of their intent to seek CWSRF financing so that Division staff can comment on the Environmental Documents during the draft stage.

3. The applicant must submit its final Environmental Document to the Division. In addition, copies of other reports and information pertaining to compliance with state and federal environmental laws must be submitted (such as, Biological Assessments, research on cultural or historical resources, air quality data, and flood maps).

Under some circumstances, a Project may be approved under a statutory or categorical exemption from CEQA. In these cases, a Notice of Exemption (NOE) must be filed with the County Clerk and the Governor's Office of Planning and Research, State Clearinghouse. A copy of the signed and stamped NOE and supporting evaluation must be sent to the Division. Compliance with applicable federal environmental laws may still be required for CEQA exempt Projects.

In addition to submitting the final Environmental Document and associated information, the applicant must also submit to the Division copies of the following:

- ✓ Resolution or similar documents certifying or adopting the document and making appropriate findings, including any Statement of Overriding Considerations for adverse environmental impacts that can not be avoided or fully mitigated for the Project that is selected;
- ✓ An adopted mitigation monitoring and reporting program, if there are proposed mitigation measures (compliance with this program will be a condition of the financing agreement); and
- ✓ The Notice of Determination (or NOD) filed with the County Clerk and Governor's Office of Planning and Research.

If a Tier I review is needed, eight (8) copies of the Environmental Documents (the Project-specific documents and any public comments received and the responses to those comments) must be submitted to the Division for distribution to designated agencies

~~responsible for implementing federal environmental laws. The applicant must respond directly to all comments received from federal agencies and/or their designated representatives.~~

~~Projects required to pass a Tier I review must obtain ESA Section 7 clearance through the Division from the U.S. Fish and Wildlife Service (USFWS) and/or National Marine Fisheries Service (NMFS) prior to a Preliminary Funding Commitment. The applicant must describe the Project and Project area (such as in a Biological Assessment specific to the Project), document the potential for the presence or absence of federal special status species in the Project area and any Project effects (both direct and indirect), and identify applicable avoidance and/or conservation measures to be taken to avoid and/or minimize impacts.~~

~~When adequate information has been received, Division staff will informally consult with USFWS and/or NMFS on behalf of the applicant for all federal special status species the Project has the potential to impact if no other federal agency has initiated the consultation process. Coordination with USEPA may be needed if formal consultation is required. Conditions or measures identified by USFWS and/or NMFS will be included in the financing agreement.~~

~~Tier I CWSRF Projects must obtain clearance through the Division with federal laws pertaining to cultural resources, specifically Section 106 of the National Historic Preservation Act. CWSRF applicants must document the presence or absence of cultural resources in the Project area, their significance, and any Project effects. This documentation must be prepared by a researcher meeting federal professional standards for the type of resource in question. Appendix E provides details about the required information. When adequate information has been submitted to the Division by the applicant, the Division's Cultural Resources Officer will review it for Section 106 compliance, will make appropriate findings and ask for State Historic Preservation Officer (SHPO) concurrence on those findings. SHPO concurrence must be obtained prior to both execution of the financing agreement and initiation of construction. Conditions identified by the SHPO will be included in the financing agreement.~~

- ~~4. Use of previously prepared Environmental Documents is acceptable provided the procedures and guidance in Sections 15153, 15162-15164, 15168, or 15221 of the CEQA Guidelines are followed and Project-specific information is adequately addressed and easily identified.~~

~~Environmental documents must have been adopted by the lead agency less than five years before the execution of the financing agreement. If the environmental documents are more than five years old, the applicant must re-evaluate the environmental documents and issue a public notice explaining the results of the re-evaluation. The re-evaluation can be done through updated environmental documents (e.g., Supplemental Environmental Impact Report [EIR], Addendum, Subsequent EIR), or any other appropriate document, for the Project. The applicant shall provide a copy of the re-evaluation and public notice regarding the Project.~~

- ~~5. The State Water Board will make its own CEQA findings and determinations based on the adequacy of the lead agency's documents. If a Preliminary Funding Commitment is approved, the Division will prepare its own NOD and file it with the Governor's Office of Planning and Research, State Clearinghouse.~~

C. Water Conservation

The State Water Board will not execute a financing agreement for a Project until the applicant has adopted a water conservation program consistent with local ordinances and authorities. In lieu of adoption of an independent water conservation program, the applicant may become a signatory to the "Memorandum of Understanding Regarding Urban Water Conservation in California" September 1991, California Urban Water Conservation Council, which may be modified to suit local conditions.

The Urban Water Management Planning Act, Water Code, Section 10631.5, requires every urban water supplier to prepare and adopt an Urban Water Management Plan that includes specific elements. Urban water suppliers, either publicly or privately owned, providing water for municipal purpose either directly or indirectly to more than 3,000 customers or supplying more than 3,000 acre-feet of water annually are subject to this Act. Agencies may submit an Urban Water Management Plan instead of a Water Conservation Program to meet the water conservation requirement (Wat. Code §10653.)

If the applicant is not a water purveyor, it must (1) certify that seventy-five (75) percent of the water connections in its service area are covered by adopted water conservation programs approved by the Division or (2) demonstrate that the water purveyor(s) have signed the Memorandum of Understanding covering at least seventy-five (75) percent of the water connections within the applicant's sewer service area. See Appendix F for further information.

The Division may waive the requirements of this section under the following circumstances: the water supplier for the community serves 3,000 or fewer customers and the costs to prepare a document to satisfy the CWSRF Policy requirements are found to be burdensome to the supplier in light of the benefits derived from the Water Conservation plan.

General Planning

If the applicant is responsible for adopting the General Plan(s) for the area affected by a proposed Project, the Division may not give FPA for the Project until the applicant's authorized representative has certified that the applicant has adopted the "land use" and "housing" elements of its General Plan and that the Project is consistent with the adopted General Plan.

If the applicant is not responsible for adopting the General Plan(s) for the area affected by the Project, then the Division may not give FPA until the applicant's authorized representative certifies that at least seventy-five (75) percent of the area affected by the Project includes cities and counties with adopted land use and housing elements. The applicant's authorized representative will also document that the applicant notified the agency(ies) responsible for adopting the General Plan(s) and provided a reasonable opportunity to comment on the Project's consistency with the General Plan(s). The applicant's authorized representative will certify that the applicant considered those comments during development of the Project.

1.4. E. Credit/Legal Review/Financial Security Package

a. General Requirements

- i. ~~The Division will perform a credit/legal review~~ the financial security documents to determine the applicant's creditworthiness and recommend a maximum funding amount based on this review.

The process for completing the credit review is as follows:

- ~~• Applicant submits the information noted in the "Credit Review," Section IX.E, along with user information required in "Project Report," Section IX.A.~~
 - ~~• The Division will forward this information to its credit consultant for analysis. The credit consultant will determine the applicant's credit worthiness based on a process modeled on those used by the major rating agencies (Standard & Poor's, Fitch, and Moody's) and actual/projected revenues.~~
 - ~~• The Division will establish~~determine ~~a credit limit for the applicant's credit capacity.~~ in consultation with the credit consultant. This will be the basis for the initial financing agreement amount. The financing agreement may contain a condition requiring that the applicant approve the necessary revenues to repay the CWSRF financing agreement before funds for construction can be disbursed.
- ii. ~~• If the applicant's financing cannot support the funding cost request exceeds the credit limit at any time,~~ the Division staff will work with the credit consultant and the applicant to find a way to finance the project(s), if feasible.

b. Reserve and Coverage

- i. The applicant will be expected to establish and maintain, until the financing agreement is repaid, a restricted reserve equal to one year's debt service from available cash prior to the construction completion date, unless the Division determines that credit or tax considerations support a different result.
- ii. The applicant must comply with existing coverage covenants or with CWSRF coverage requirements, whichever covenants or requirements provide greater coverage. Where a CWSRF obligation will be within the applicant's top tier of related debt (senior level), the CWSRF coverage requirement is 1.1 times the highest year's debt service after completion of project construction. Where a CWSRF obligation will be subordinate level debt, the CWSRF coverage requirement is 1.2 times the highest year's projected debt service.

c. Additional Debt

- i. The State Water Board expects the CWSRF debt obligation to be a senior debt obligation.
- ii. Additional obligations secured by the Pledged Revenue and Funds (PRF) may be senior to CWSRF obligations under the following conditions:
 - (A) The CWSRF agreement provides for 100 percent forgiveness of principal; or
 - (B) The senior obligation(s) predates the CWSRF obligation, the applicant meets the coverage requirements of section IX(B)(4)(b) of this Policy, and the Deputy Director of the Division determines that such additional obligation(s) will not negatively affect existing or proposed CWSRF bonds; or
 - (C) The senior obligation meets the conditions set forth in paragraph iv. of this section.
- iii. Additional obligations secured by the PRF may be on parity with the CWSRF obligations under the following conditions:
 - (A) The applicant's non-subordinate debt is rated "A," or higher, by at least two of the three nationally recognized rating agencies; or
 - (B) The applicant is a SDAC and the Division determines that the applicant meets the coverage requirements of section IX(B)(4)(b) and:
 - (1) It would be economically burdensome for the applicant to obtain nationally recognized ratings; or
 - (2) Requiring additional debt to be subordinate to the CWSRF obligation will unduly restrict the applicant from obtaining future system debt necessary for water quality improvements.
- iv. The applicant may refund senior debt with new senior debt if all of the following conditions are met:
 - (1) The new senior debt refunds or refinances existing debt senior to an existing CWSRF obligation;
 - (2) The new senior debt has the same or earlier repayment term as the refunded senior debt;
 - (3) The new senior debt service is the same or lower than the existing debt service; and
 - (4) The new senior debt will not diminish the applicant's ability to repay its CWSRF obligation(s).

d.

~~All Applicants shall comply with the Credit Review requirements. For all applicants, no bond, loan, or debt defaults may exist as of the date the financing agreement is executed. Prior defaults may be grounds for disapproval, depending on the circumstances.~~

Election/Proposition 218

~~The applicant shall submit evidence that any revenue derived from property related fees and charges needed for the project or the debt associated with the project has been approved in accordance with Article XIII(c) and XIII(d) of the California Constitution, Proposition 218, or a legal opinion explaining why those procedures are not applicable. The net revenue to debt coverage shall be at least 1.2 to 1.0 for all senior debt and 1.1 to 1.0 for the highest year's debt service after completion of project construction. If the necessary revenue subject to Proposition 218 requirements has not been approved, a financing agreement may be executed, but funds for construction will not be disbursed until the rates are approved.~~

~~If an applicant has awarded a construction contract for its project as of September 16, 2008, the Division may execute the financing agreement for the project. The Division, however, may not disburse more than 25 percent of the financing agreement until the applicant has submitted evidence that the necessary revenue has been approved for the project pursuant to applicable election or Proposition 218 procedures or provided a legal opinion explaining why an election or Proposition 218 procedures are not applicable.~~

Dedicated Source(s) of FundsPRF resolution

The applicant must submit a resolution or ordinance adopted by its governing board that pledges one or more sources of existing revenue and funds as security for the CWSRF financing agreement. See Appendix G of this Policy for a sample resolution. A restricted reserve will also be required in most cases.

A PRF may be a special tax, user fees, or a special assessment, provided that the applicant has the authority to control and pledge the PRF. The PRF may also include liens on real property and other appropriate security liens.

- ~~i.~~
- ~~ii. Section 603(d)(1)(C) of the Federal CWA requires each financing recipient to establish one or more dedicated sources of revenue for payment of the financing agreement. A dedicated source can be general taxes, user fees, a special assessment, or other acceptable sources.~~
- ~~iii. Revenue will be considered dedicated when the Agency passes an ordinance or resolution committing a source of funds for payments. The ordinance or resolution dedicating a source of revenue for payment of the~~

CWSRF financing agreement must be adopted by the Agency's governing board before approval of the Preliminary Funding Commitment (PFC).

Ordinance or resolution language equivalent to the following example is acceptable:

~~The (Agency) hereby dedicates the following source of revenue (user charge proceeds or revenue bonds, etc.) to pay any and all Clean Water State Revolving Fund financial agreement(s) on Project No. C-06-xxxx-xxx. This dedicated source of revenue shall remain in effect until such financing agreement is fully discharged unless the State Water Resource Control Board approves modification or change of such dedication in writing.~~

e. Existing Debt

- i. If the applicant has no other debt, the Agency's Authorized Representative must verify this.
- ii. The applicant must submit a schedule of all debt secured by the PRF, along with a copy of each relevant debt document. This schedule will be an exhibit to the CWSRF financing agreement and will rank existing debt according to priority in relation to the proposed CWSRF debt (senior, parity, or subordinate).

f. Future Capital Needs

The applicant must describe its capital improvement plans and the long-term indebtedness needed to fund its future capital improvements. The applicant must provide any formal capital improvement plan it has to the Division.

g. Financial Statements and Budget and Security

- i. The applicant must provide three years of financial statements, preferably audited financial statements. The financial statements must include the current year (if available) and the two previous years, or three previous years if the current year is not yet completed. The applicant must provide any adopted budget for future year(s).
- ii. The applicant must identify any restricted funds and the reason for the restrictions.
- iii. The applicant must identify all sources of security to be pledged. If using real property, the applicant must provide at least two appraisals of the value, how the value was determined, and whether the property is currently pledged as security on any other debt.

h.

~~The applicant shall provide three years of financial statements. The financial statements must include current year (if available), and two years prior (Audited financial statements are preferred).~~

~~The applicant shall identify any cash reserves and the planned uses of the cash reserves shown in the financial statements.~~

~~The applicant shall identify other sources of security if needed for a financing agreement, such as, assessments, stocks, Surety Bonds from an insurance company, or property. If using property, provide an estimate of the value, how the value was determined, and whether the property is pledged as security for another financing agreement.~~

~~Litigation or Adverse Findings~~

~~The applicant shall describe any pending or anticipated litigation, contractual or ratepayer/taxpayer disputes or adverse findings by outside auditors (including commercial and government auditors, grand juries, or other similar entities acting in a formal capacity) that may detrimentally affect the applicant's payment source, the ability of the applicant to agree to or pay the CWSRF financing or manage and implement the project financed by the CWSRF Program.~~

~~Existing Indebtedness~~

~~For the purposes of the following, "existing debt" means the applicant's existing debt that relies on the same pledged revenue source as the applicant is pledging for payment of the CWSRF financing.~~

~~The applicant shall submit a schedule of existing debt. This schedule will be an exhibit to the CWSRF financing agreement and will rank existing debt according to priority in relation to the new, anticipated CWSRF debt (senior, parity, or subordinate). The schedule will list the name of lender, title of debt, debt term, interest rate, total debt amount, remaining debt balance, and debt end date.~~

~~The applicant shall submit a letter from the Agency's bond counsel (in certain circumstances local counsel will be adequate) that:~~

~~Cites the relevant provisions in each of the applicant's existing debt documents listed in the schedule (other than CWSRF debt) that affect its ability to enter into and repay the requested financing.~~

~~Provides counsel's opinion about whether those conditions have been met, and~~

~~Provides counsel's opinion about whether those documents preclude the applicant's ability to agree to the CWSRF financing agreement.~~

~~If the applicant has no other debt (except other CWSRF debt), the Agency's Authorized Representative must provide a letter stating this.~~

~~For all existing debt (other than CWSRF debt), the applicant shall submit the relevant debt document (loan agreement, bond indenture, etc.) by digital or paper copy. The applicant may be required to submit supplemental materials (Offering Statement, maturity schedules, etc.), particularly in the case of multiple series indentures or large debt loads.~~

~~6. Future Capital Needs~~

~~The applicant must describe its capital improvement plans and the long-term indebtedness needed to fund future capital improvements.~~ Tax Questions

The applicant must provide certain information for the State Water Board's tax counsel to assess the applicant's ability to receive CWSRF funds from tax-exempt revenue bond proceeds.

i. Applicant Resolution(s)/Ordinances

The applicant must submit resolutions or ordinances authorizing submittal of the application, authorizing the match component (if match financing is requested), and designating an Authorized Representative by title as a financing agreement signatory. The applicant must submit a reimbursement resolution meeting the reimbursement requirements for compliance with federal tax laws.

j. Material events, existing debt, and debt limits

i. The applicant must submit information regarding current, prior, or pending material events (bankruptcy, defaults, litigation, Grand Jury findings/indictments).

ii. The applicant must identify any conditions in related debt obligations that must be satisfied prior to executing the CWSRF financing agreement.

iii. The applicant must identify any debt limit to which it is subject.

k. New Tax, Fee, Charge or Assessments Projections

If a new tax, fee, charge, or assessments will be a PRF, provide budget projections based on the proposed taxes, fees, charges, or assessments.

l. Extended Term Financing Analysis

Applicants requesting ETF must provide an affordability analysis and a useful life analysis to show that the useful life is at least equal to or greater than the financing term and the requested term is necessary to make the project affordable.

m. Relevant service, management, operating, or joint powers agreements

The applicant must provide a copy of any relevant service, management, operating, or joint powers agreements for the proposed project with a summary explanation of the shared financial and management responsibilities of each party.

n. Legal Opinion(s)

i. The applicant must meet the requirements of section VIII(A)(2)(d) of this Policy; and

ii. The applicant will be expected to submit an opinion from counsel that applicant has sufficient property rights in the land used for all portions of the project to enable it to access, construct, operate, maintain, and allow for outside inspections of the project throughout the CWSRF financing term.

~~F. Other Submittals~~

~~1. Legal Authority: The applicant shall cite the statute that authorizes the applicant to enter into the financing agreement requested and provide contact information for the applicant's legal counsel for follow up questions from State Water Board legal counsel.~~

~~2. Tax Questions: The applicant shall provide as part of its signed application, information for the State Water Board's tax counsel to assess the Agency's ability to receive CWSRF funds from tax-exempt revenue bond financing sources.~~

~~3. Joint Powers Agreement: The applicant shall provide a copy of any Joint Powers Agreement for the proposed Project with a summary explanation of the shared financial, construction, and management responsibilities of each Agency.~~

~~4. Agency Resolution(s): Agency Resolutions are required authorizing the application, the financing amount (at the option of the applicant), Local Match (if local match financing is requested), and designating an Authorized Representative (named or position title).~~

~~5. Access and Ownership of Land: Applicant must have sufficient property rights in the land used for all portions of the Project to enable it to access, construct, operate, maintain, and allow for outside inspections of the Project throughout the useful life of the Project and/or the CWSRF financing term, whichever period is longer. The applicant or applicant's attorney must certify that such property rights exist, and must state what type of property rights they are, and to which portions of the Project a particular right applies. If the applicant is not able to submit such a certification with the application, the Division may execute the financing agreement, but may not disburse funds for construction until the applicant can make such a certification.~~

~~The Division may request additional documentation to substantiate an applicant's access and ownership to lands for the Project.~~

~~A.C. G. Eligible Project Eligibility~~

~~Project components at publicly-owned facilities, other than reserve capacity, are intended to be completely eligible or ineligible. To the extent consistent with federal and state authority, the following are categories of eligible and ineligible costs. The applicant's engineer must segregate the eligible and ineligible items.:~~

1. ~~1.~~—Eligible Project Costs

~~a. a.~~—Treatment facilities, including new collection systems ~~in to serve~~ existing ~~developed homes or businesses or new development in infill~~ -areas within the ~~existing~~ service area, alternative treatment facilities such as leachfields, mound systems, and constructed wetlands, purchase of lands, rights-of-ways, and easements for land that will be an integral part¹ of the treatment process or will be used for sludge disposal, and equipment or systems to reduce energy use or reduce the effects of climate change.

~~a.b.~~ Pre-purchased material and equipment used in the project and purchased in accordance with state law;

~~c. b.~~—Reserve capacity for treatment plants, pump stations, and pipelines per section IX(D)(1) below;

~~b.d.~~ c.—~~Reasonable a~~Administration, maintenance, and laboratory building space directly related to the operation of the eligible facilities;

~~e.e.~~ d.—Process control systems;

~~d. e.~~—Mitigation measures (except for land purchase) mandated by ~~S~~state and/or federal agencies;

~~f.~~

~~e.~~

~~f.g. f.~~—Contingency for Eligible Cchange Orders approved by the Division for increased costs provided the costs are eligible, consistent with the original scope of the project and the credit review. The contingency amount will be included in the financing agreement, not to exceed the Approval of Award amount, provided the recipient documents eligible positive and negative Change Orders;

~~g.h.~~ g.—Recycled water distribution and storage system capacity purchases directly related to the operation of eligible facilities consistent with the Water Recycling Funding Program (WRFP) Guidelines in Appendix ~~DD~~;

¹ Integral part means the land is being used in the treatment process. Land that is needed to build a new treatment process such as a clarifier, disinfection system, etc. is not considered an integral part in the treatment process and is not an eligible cost. Land for disposal (i.e., for spray irrigation or percolation ponds) is not eligible.

- h.i. ~~h.~~—On-site solids handling systems necessary to meet Regional Water Board waste discharge permit requirements, ~~(including~~ systems that perform thickening, stabilization, and dewatering of sludge as a means of preparing it for beneficial reuse and/or ultimate disposal);
- i.j. ~~i.~~—Stationary and mobile equipment ~~which that~~ are ~~an integral part of to~~ the wastewater treatment, collection, or sludge handling processes, including, but not limited to, such as front loaders for sludge drying beds, injection/spray irrigation equipment for dedicated land disposal sites, vactor trucks, and compost windrow turners. ~~E~~Dedicated equipment must be confined to the treatment, collection, or sludge handling systems for which it was purchased ~~plant or disposal site owned by the recipient;~~
- j.k. ~~j.~~—Costs for planning, design, construction management, value engineering, and administration;
- k.l. ~~k.~~—Costs to prepare an Environmental Management Systems (EMS) and or Asset Management System not previously financed through CWSRF planning/design financing;s;
- l.m. ~~l.~~—~~Special e~~Equipment necessary to maintain the eligible treatment facilities, including the manufacturer’s list of spare parts;
- m.n. ~~m.~~—Necessary insurance related to the construction contract;
- n.o. ~~n.~~—Cost-effective buy-in for all of the proportional costs to connect to an existing treatment plant and/or collection system. Purchase of capacity is not considered refinancing;
- o.p. ~~o.~~—Recycled water systems (not including gray water systems);
 - i. ~~1.~~—Recycled water treatment works;
 - ii. ~~2.~~—Recycled water storage facilities;
 - iii. ~~3.~~—Recycled water pumping facilities;
 - iv. ~~4.~~—Recycled water ground-water recharge facilities;
 - v. ~~5.~~—Recycled water distribution systems;
 - vi. ~~6.~~—Recycled water onsite user retrofits on publicly owned use sites; and
 - i.vii. ~~7.~~—Recycled water capacity purchases (buy in costs).
- p.q. ~~p.~~—Water conservation measures:
 - i. ~~1.~~—Installation of water supply meters;

~~ii. 2.~~ Plumbing fixture retrofits or replacements;

~~iii. 3.~~ Use of efficient landscape irrigation equipment; and

~~i-iv. 4.~~ Public water conservation education programs.

2. ~~2.~~ Ineligible Costs

~~a. a.~~ New collection systems not serving existing homes and businesses unless the new collection system serves an infill project within an existing service area.

~~a.b. —~~ All land, easements, and rights of way, ~~except purchase of lands, rights-of-ways, and easements for land that will be an~~not used for sludge disposal or not an integral part of the treatment process ~~or will be used for sludge disposal~~;

~~cb.~~ Contingencies and honorariums;

~~ed.~~ House-Private laterals for collection systems beyond the public right-of-way and any in-~~house-building~~ facilities;

~~de.~~ Engineering costs included as part of the construction bid for other than ~~D~~design-~~B~~uild projects;

~~ef.~~ Decorative items (art work, sculptures, reflective ponds, fountains, etc.);

~~gf.~~ Non-wastewater Solids handling facilities that perform pasteurization, co-generation, conditioning, heat drying, thermal reduction, and facilities for packaging or distributing biosolids;

~~gh.~~ Operation and maintenance costs and extended warranties for equipment and act of God, flood, and earthquake insurance costs;

~~hj.~~ Motor vehicles used for employee transportation or for the transportation of materials generated or consumed by the treatment plant;

~~ij.~~ All other items not included in the construction contract except allowances; and

~~jk.~~ Replacement of facilities previously ~~grant~~ funded by Clean Water grants or CWSRF facilities financing is ineligible except for theunder one of the following specific cases/circumstances:

~~i. (1)~~ — Where ~~an amendment to a basin plan adopted by a Regional Water Board requires~~ upgrading ~~of specific~~ treatment systems or technology ~~is necessary~~ to achieve the Regional Water Board-mandated a mandated-enhanced level of treatment; and the replacement of previously ~~grant~~ funded facilities is necessary to

achieve the mandated enhanced level of treatment ~~required by the amendment~~;

ii. Where replacement of equipment reduces the effects of climate change, such as greater energy efficiency, or provides for more dependable or cost effective operation of the facility; or

iii. Where a proposed water recycling project:

A. Meets the definition of an eligible water recycling project pursuant to current WRF Guidelines per Appendix D;

B. Uses recycled water to replace a bona fide current or proposed beneficial consumptive use of fresh water; and

C. Necessitates the replacement of previously funded facilities to install the recycling project.

~~i.~~

~~B. (2) Where a proposed water recycling Project that meets the definition of an eligible water recycling Project contained in the most recently amended WRF Guidelines (See Appendix D) adopted by the State Water Board ; and which is proposed to use recycled water to replace a bonafide current or proposed beneficial consumptive use of potable water; and where replacement of previously grant funded facilities is necessary to install the recycling Project;~~

~~C.~~

~~D. (3) Where replacement of equipment reduces the effects of climate change, such as greater energy efficiency, or provides for more dependable operation of the facility.~~

~~E.~~

~~F. (4) Notwithstanding any other provisions of this policy, the State Water Board may consider granting an exception to this policy in the event that the State Water Board, after a meeting, makes a finding that the petitioner suffers from severe hardship or unique circumstances.~~

~~G.~~

~~H. The above eligible and ineligible items must be segregated in the engineer's estimate.~~

~~I.~~

D. H. Capacity Funding Limitations

1. Capacity

a. The Division will determine eligible capacity of ~~Publicly Owned Treatment Works (POTWs) shall be determined~~ using average dry weather flow (ADWF) and appropriate peak flows in accordance with population and per capita flow estimates provided by the applicant. The applicant will be responsible for documenting, in the Project Report, the average dry weather flow and peaking factors used for the project. Project capacity must be consistent with environmental constraints.

b. The Division will calculate eligible capacity by multiplying the appropriate local population projection by an appropriate local per capita flow figure. For existing treatment facilities, the Division will base the per capita flow on the existing population and the measured flow. This flow will be deemed to include the entire eligible project flows (residential, commercial, existing federal facilities, existing industrial, and infiltration/inflow). The Division will determine eligible capacity prior to the funding approval.

c. Eligible design capacity for POTWs may be based on flow projections up to a period of twenty (20) years from the initiation of operation. For projects designed to serve a capacity greater than 20 years after initiation of operation, the Division will determine eligible and ineligible costs on an incremental basis. The Division will determine eligible capacity for multiple phased projects on a case-by-case basis.

a-d. Eligible design capacity for collection systems, interceptors, and outfalls may be based on flow projections up to forty (40) years from the initiation of operation. The Division will allocate between eligible and ineligible costs for capacity needs more than forty years after initiation of operation on an incremental basis. The Division will determine eligible capacity for multiple phased projects on a case-by-case basis.

~~2. Eligible capacity for POTWs will be up to a period of twenty (20) years from the estimated Project completion date. For Projects with a design capacity greater than 20 years, eligible and ineligible costs shall be determined on an incremental basis. Eligible capacity for multiple phased Projects shall be determined on a case-by-case basis.~~

~~3.~~

~~4. Eligible capacity for collection systems, interceptors and outfalls will be up to forty (40) years from the estimated date of Project completion. Allocation between eligible and ineligible costs shall be determined on an incremental basis. Eligible Capacity for multiple phased Projects shall be determined on a case-by-case basis.~~

~~5.~~

~~6. Eligible capacity shall be calculated by multiplying the appropriate local population projection by an appropriate local per capita flow figure. For existing treatment facilities, the per capita flow shall be based on the existing population and the measured flow. The flow thus calculated will be deemed to include the entire eligible Project flows (residential, commercial, existing federal facilities, existing industrial, and infiltration/inflow). Eligible capacity will be determined at the facilities planning stage.~~

~~7.~~

~~8. The applicant will be responsible for documenting, in the facilities plan, the peaking factors used for the Project.~~

~~9.~~

~~10-2. _____!~~ Population or Flow Projections

The applicant must submit Ppopulation projections must be from an independent agency source (i.e., Regional Council of Governments,

appropriate local planning agencies, Department of Finance, or Area-wide Water Quality (208) Management Plans prepared pursuant to section 208 of the CWA). The Division will use Ppopulation or flow projections will be used to determine the eligible Pproject capacity. Depending on the apparent reasonableness of the local projection, tThe Division may require additional documentation to support the projection's reasonableness of the projection. A The applicant must include a detailed discussion of the local projections should be included in the Project Report.

~~11.3.~~ J. ~~Industrial and Federal Facilities~~

Eligible capacity will may include flows from existing industrial federal and federal industrial facilities discharging to the municipal system.

K. ~~Preliminary Funding Commitment~~

~~The Division may request a Preliminary Funding Commitment from the State Water Board after the Division has issued a FPA and the applicant has concurred with the FPA. The Preliminary Funding Commitment may contain conditions that must be met by the applicant and expiration date(s) established by the Division. Following the Preliminary Funding Commitment and prior to design or Request for Design-Build Proposal completion, the applicant is required to advise the Division whether the proposed Project will be completed using Design-Build or the Design-Bid-Build (normal) method of construction.~~

~~For routine, noncontroversial Projects on the Statewide List, the Deputy Director of the Division or designee is authorized to make Preliminary Funding Commitments.~~

~~For any Project, including non-routine, controversial Projects, the Deputy Director or designee may approve up to a one hundred and twenty (120) day extension of the Preliminary Funding Commitment expiration date(s) for good cause.~~

X. ~~X.~~ EXPANDED USE CONSTRUCTION/IMPLEMENTATION FINANCING

An applicant must submit all documents noted below, unless otherwise authorized by the Division for good cause, to obtain financing under this section. The Division may require that the applicant submit additional information or certifications necessary to ensure that the financing complies with state and federal requirements. Appendix G contains the application for construction/implementation financing.

A. General

1. The application is organized into four packages: 1) general information, 2) technical, 3) environmental, and 4) financial security. The Division will accept partial packages and applications, but will process complete applications prior to incomplete applications consistent with section IV(A)(5) of this Policy. Applicants should submit the complete application well in advance of beginning to construct or implement the project.
2. To expedite financing, the Division will assist applicants with specific program requirements during the application review. The Division may also offer

limited assistance to applicants to bolster their administrative and managerial capacity.

B. Application Requirements

All applicants must meet the application requirements of section IX(B) above. The Executive Director, Deputy Director, or designee may waive a requirement of section IX(B) for an expanded use project as appropriate unless otherwise required by federal or state statute, regulations, guidance, or agreements.

C. Eligibility

To the extent consistent with federal and state authority, the following expenses are generally eligible or ineligible for CWSRF funding for Expanded Use projects:

1. Eligible Project Costs

- a. Construction of facilities to treat, reduce, or prevent NPS or point source pollution not regulated by an National Pollution Discharge Elimination System permit,² including reimbursement of planning, design, environmental documents, project administration, and construction management for facilities construction;
- b. Costs necessary to implement nonstructural components of water quality control projects;
- c. Purchase of land or interests in land necessary for the project or for the purposes of protecting or preserving beneficial uses, including necessary mitigation measures and project implementation;
- d. Demonstration projects;
- e. Education and outreach programs; and
- f. Project performance monitoring.; and

2. Ineligible Project Costs

- a. Operation and maintenance costs, extended warranties for equipment, acts of God, flood or earthquake insurance costs;
- b. Motor vehicles used for employee transportation or for the transportation of materials generated or consumed by the project; and
- c. Expenses associated with any project that is not an eligible CWSRF Expanded Use project type; and-

² Storm water projects are eligible for funding under section IX of this Policy if they have a National Pollutant Discharge Elimination System permit and are publicly owned.

d. General overhead.

XI. CONSTRUCTION/IMPLEMENTATION FINANCING AGREEMENT

A. A.—Financing Approval

1. The applicant may receive a financing agreement based on the estimated Eligible Project Costs after an application for its project has been reviewed and approved.

a. For routine, noncontroversial projects on the Project List, the Executive Director, Deputy Director of the Division, or designee is authorized to approve financing.

b. Non-routine or controversial projects will be considered by the State Water Board at a State Water Board meeting.

A.B. Execution of the Financing Agreement ~~and Retroactive Costs~~

~~The construction financing agreement may be executed after the Preliminary Funding Commitment.~~ The Executive Director, Deputy Director of the Division, or designee, may execute ~~such~~ agreements and amendments on behalf of the State Water Board for projects with an approved application. ~~No funds~~ Disbursement of funds is contingent on execution of a financing agreement, and the State Water Board will not disburse ~~will be disbursed funds~~ until after a financing agreement has been executed.

1. Conditions and Eligible allowances that were incurred prior to the financing agreement may be disbursed after execution of the financing agreement. Costs previously disbursed under a planning financing agreement are not eligible for reimbursement. Expiration Date(s)

Financing agreements may include appropriate conditions and expiration dates to ensure that projects are completed expeditiously in conformance with applicable requirements. The Deputy Director or designee may waive or amend a financing agreement expiration date for good cause. If a recipient misses an expiration date, and does not receive such an extension, it may need to reapply for CWSRF funding.

~~1. Eligible Project construction or equipment procurement costs may be disbursed after the Division has received an Approval of Award (AOA) request and the applicant has agreed to the Division's AOA decision by executing or amending a financing agreement that incorporates the AOA decision.~~

~~2.—~~

3.2. B.—Allowances (Soft Costs)

~~Funds may be provided to the recipient for planning, design, value engineering, construction management, and administration.~~ Disbursement

~~of soft costs will be made on actual costs incurred and may be requested as soon as the financing agreement is executed. The soft costs soon as the financing agreement is executed. The soft cost amounts in the financing agreement will be based on the amount requested by the applicant. The soft costs will be reviewed and approved by the Division based on Project documentation submitted to support soft costs incurred.~~

3. C. — Effective Date

The effective date of the financing is the date used to determine the interest rate in section IV(C)(1) of this Policy. Construction costs incurred prior to the effective date are not eligible for CWSRF financing.

~~4. Interest Rate, Service Charge, and DAC Funding~~

~~5. —~~

~~6. The Service Charge provides funding for administration of the CWSRF Program. These costs were previously funded by the Federal Capitalization Grants the Program receives. Since these grants have been declining, though, the Legislature approved redirecting some of the interest earnings on financing agreements to administration of the Program to replace any funds not provided by the grants. The interest is reduced on financing agreements that include the Service Charge so that the overall payment is the same whether a Service Charge is applied or not.~~

~~7. —~~

~~8. The DAC Funding Charge provides a source of grant funding for DACs (up to a maximum of \$50 million). AB 2356 was passed and signed in to law in 2008. This law approved redirecting some of the interest earnings on financing agreements to the Small Community Wastewater Grant Funding Program to help make projects more affordable for DACs. The interest is reduced on financing agreements that include the DAC Funding Charge in the same way that interest is reduced for agreements with the Service Charge so that the overall payment is the same whether a DAC Funding Charge is applied or not.~~

~~9. —~~

~~10. The interest rate for CWSRF financing agreements shall be half the most recent general obligation bond rate obtained by the State Treasurer's Office as of the date that the Preliminary Funding Commitment is approved. If the bond rate is not a multiple of 0.1, then the Division will round up to the nearest 0.1 percent. Where a Service Charge and/or DAC Funding Charge is included in the financing, the combined interest and charge(s) shall be equivalent to half of the most recent general obligation bond rate obtained by the State Treasurer's Office, rounded up to the nearest 0.1 percent.~~

4. Compliance with Federal and State Statutes and Authorities

The financing agreement includes the applicant's certification that the applicant has complied, or will comply, with a non-exclusive list of federal and state laws, as well as any other applicable federal and state laws.

5. Disadvantaged Business Enterprise (DBE)

- a. The DBE Program is a federal program designed to increase the participation of DBEs. The recipient must insert the DBE forms provided in Appendix J into the specifications. The State Water Board strongly encourages a pre-bid conference with the prospective bidders to explain the DBE requirement.
- b. The recipient must submit all completed DBE forms from the selected contractor with the final budget approval package per section XI(C)(2) below. If the recipient has not taken acceptable "Good Faith" efforts, the Division cannot accept the award of the construction contract. The recipient may select the next low, responsive and responsible bidder. Alternatively, it may rebid the contract. It must choose one of these options in order to receive CWSRF assistance. Consistent with the results of the Division's financial security review, the Division will amend the financing agreement to reflect the costs of selecting the next low, responsive and responsible bidder or the low, responsive, and responsible bidder after rebidding the project.
- c. During construction, the recipient must report DBE utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334. (See Appendix J.) The recipient must submit reports to the Division within ten (10) calendar days of the end of the semiannual reporting period (April 10 and October 10) until the "Notice of Completion" is issued.

6. Davis Bacon

All CWSRF construction financing or refinancing agreements will contain Davis-Bacon provisions (including appropriate wage determinations and required clauses in bids and contracts, verification of registration in approved U.S. Department of Labor Apprenticeship Programs, conducting wage rate interviews, collection/review of weekly payroll and compliance statements, posting applicable wage and whistle blower notices at construction sites), no matter when construction commenced or commences.

7. Force Account, Land Purchase and Other Non-Bid Projects

Force Account, Land Purchase and Other Non-Bid Projects that do not require public contracting or procurement to establish the final budget and scope of work in the financing agreement do not need to go through the process of executing an amended financing agreement per section XI(C) of this Policy.

~~B. D. Disadvantaged Community (DAC) Incentives~~

~~C.~~

~~D. 1. A DAC with a MHI less than 80 percent of the statewide MHI:~~

~~E.~~

~~F. a. May receive Extended Term Financing, consistent with USEPA's approval, if wastewater rates are 1.5 percent or more of the DAC's MHI.~~

~~G.~~

- ~~H. b. May receive a reduced interest rate not less than zero percent to the extent necessary to reduce wastewater rates to 1.5 percent of the DAC's MHI.~~
- ~~I.~~
- ~~J. c. If reduced interest rates are not sufficient to lower wastewater rates to 1.5 percent of the DAC's MHI, then the DAC may receive any additional subsidy that may be available and offered by the State Water Board through the CWSRF to the extent necessary to reduce wastewater rates to 1.5 percent of the DAC's MHI.~~
- ~~K.~~
- ~~L. 2. A DAC that pays at least four percent of its MHI for wastewater rates may receive Extended Term Financing if approved by the State Water Board consistent with USEPA's approval.~~
- ~~M.~~
- ~~N. 3. A DAC may receive the other incentives offered by the State Water Board in Section X.E in lieu of the incentives in this Section if it is more advantageous to the community.~~
- ~~O.~~
- ~~P. E. Other Incentives~~
- ~~Q.~~
- ~~R. The State Water Board may lower the interest rate determined in X.D for a specified class of borrowers or type of project after a public meeting.~~
- ~~S.~~
- ~~T. The State Water Board may provide other financial incentives allowed by law for a specified class of borrowers or type of project after a public meeting.~~
- ~~U.~~
- ~~V.~~
- ~~W. F. Cost Increases~~
- ~~X.~~
- ~~Y. After the financing agreement is executed or amended based on the AOA, all Project changes that result in cost increases will be the responsibility of the recipient. Change order increases that are offset by change order decreases may be funded after the construction is completed, if approved by the Division as eligible changes. The recipient must provide to the Division a description of the change order cost and reason for the change order. Any approval of change orders shall be capped at the AOA amount.~~
- ~~Z.~~
- ~~AA. If at any time the requested financing amount exceeds the preliminary funding commitment amount by more than fifty (50) percent or the credit limit, whichever is less, the Project must receive re-approval of the preliminary funding commitment.~~
- ~~BB.~~
- ~~CC. G. Future Local Debt~~
- ~~DD.~~
- ~~EE. 1. The applicant's future debt may not be senior to CWSRF debt. The applicant's future local debt may be on parity with the CWSRF debt if the following conditions are met.~~
- ~~FF.~~
- ~~GG. a. i. The applicant's non-subordinate debt is rated "A," or higher, by at least two nationally recognized rating agencies; or~~

~~HH.—~~

~~II. ii.— The applicant is a disadvantaged community and the Division determines that it would be economically burdensome for the agency to obtain nationally recognized ratings for its non-subordinate debt; or~~

~~JJ.—~~

~~KK.— iii.— The applicant is a disadvantaged community and the Division determines that requiring future debt to be subordinate to the CWSRF debt will unduly restrict the agency from obtaining future system debt necessary for water quality improvements.~~

~~LL.—~~

~~MM.—and~~

~~NN.—~~

~~OO. b.— The applicant's net revenues pledged to pay all senior debts relying on the pledged revenue source are at least 1.2 times the highest year's debt service and net revenues pledged to pay all debts are at least 1.1 times the highest year's debt service.~~

~~PP.—~~

C. H.— Amended Financing Agreement

1. Final Budget Approval Package

The recipient must submit a final budget approval package. The primary focus of the review of the final budget approval package will be to determine consistency with the approved financing, the likelihood of meeting limits or objectives established by the Regional Water Board, and compliance with applicable CWSRF Program requirements, including federal cross-cutters.

a. The recipient must submit the final budget approval package to the Division for review and approval prior to disbursement of construction or previously unidentified equipment or material costs. The Division will also review the package to ensure that both the recipient and its contractors or vendors have complied with the applicable requirements of this section, any conditions specified in the financing approval, and that all permits, approvals, and financing necessary to complete the project have been obtained. Applicants may start construction prior to the effective date of the financing agreement, but will not receive reimbursement of construction costs incurred prior to the effective date, and are not guaranteed financing approval and an executed financing agreement.

b. Neither the USEPA nor the State Water Board will participate in resolving bid or contractual disputes. The recipient will have sole responsibility to resolve all bid or contractual disputes. The amended financing agreement will not be sent to the recipient until all bid and/or contract disputes have been resolved.

c. The Division will use the bids, proposals, and purchase orders accepted by the recipient, along with the requested contingency amount to determine the eligible amended financing agreement amount consistent with the financing limit determined by section IX(B)(4)(a)(i) of this Policy. The

recipient must certify that it complies with all applicable public contracting requirements.

2. Execution of Amendment

- a. After the Division reviews and approves the final budget approval package, it will incorporate its eligibility decisions into an amended financing agreement and send the amendment to the recipient for signature. The amended financing agreement must be executed prior to disbursement of costs identified in the final budget approval package.
- b. The Completion of Construction date will be revised in the amended financing agreement for the purpose of determining the recipient's final payment schedule. The final Completion of Construction date will be established by mutual agreement between the Division and the recipient.

D. Cost Increases

1. The applicant may include a contingency amount in its application, subject to Division approval. The Division's credit review will evaluate the contingency amount. If the credit review shows the applicant can afford repayment, the financing agreement will include the contingency amount. The recipient can use this contingency amount, plus any other funds remaining due to construction/implementation or allowance cost reductions, to pay for change orders approved by the Division. The recipient must cover change order cost until such costs are approved by the Division. The Division will disencumber any unused funds at the end of the project.
2. Where the financing agreement provides for 100 percent forgiveness of the principal or provides for a grant, the total amount of CWSRF principal forgiveness or grant assistance cannot exceed the limits established in the IUP or the amount made available by USEPA. The Division will evaluate cost increases for these projects on a case by case basis. The Division-approved contingency amount shall not exceed ten percent of the budgeted construction amount.
3. The State Water Board will not increase or add funds to the financing agreement after the final budget is approved and the amended finance agreement is executed. All project changes that result in costs that exceed the approved contingency amount will be the responsibility of the recipient.

Effective Date

~~The effective date of the financing agreement means the date specified as the beginning of the financing agreement. Eligible construction costs under the financing agreement may be incurred after this date. Construction costs incurred prior to the effective date will not be eligible for CWSRF financing. Eligible equipment procurement costs may be incurred before the effective date, at the Recipient's risk. This date will be the date of Preliminary Funding Commitment.~~

~~I. Expiration Date(s)~~

~~Financing Agreements may include appropriate expiration dates established in cooperation with the applicant to ensure that projects proceed to construction and are completed. Disbursements will stop if any of the expiration dates are not met. The Deputy Director or designee may extend a financing agreement expiration date for good cause. Applicants that miss an expiration date and do not receive approval of an extension must reapply for CWSRF funding per Section IX.~~

~~XI. APPROVAL OF AWARD (AOA)~~

~~A. Equipment Procurement, Plans and Specifications, or Request for Proposals Approval~~

~~1. The primary focus of the review of the Equipment Procurement, Plans and Specifications (P&S), or Request for Proposals will be to determine if the equipment, design, or design-build proposal is consistent with the facilities described in the FPA, if the proposed Project, in concept, will meet WDRs, and if it will comply with applicable federal and State CWSRF Program requirements.~~

~~2. Applicants, at their option, may submit draft purchase orders, preliminary P&S, or the draft RFP for review if they would like an initial review prior to finalizing the purchase order, Project P&S, or RFP. Applicants may also request, at their option, a detailed review of the purchase order, P&S, or RFP by the Division with any comments forwarded to the applicants and their consultants.~~

~~B. Approval of Award Package and Amended Financing Agreement~~

~~1. Recipients are required to submit an AOA package to the Division for review and approval prior to disbursement of equipment procurement, construction, or design-build costs. The Division will also review the AOA request package to assure that both the recipient and its contractors or vendors have complied with the applicable requirements of this section, any conditions specified in the PFC, and that all permits, approvals, and financing necessary to complete the project have been obtained. Applicants may incur eligible equipment procurement and construction costs at their risk consistent with Section X.H, Effective Date, before receiving an executed amended financing agreement.~~

~~2. Neither the USEPA nor the State Water Board will be involved in resolving bid or contractual disputes. Bid or contract dispute resolution will be the sole responsibility of the recipient. The amended financing agreement will not be issued until all bid and/or contract disputes have been resolved by the recipient.~~

~~3. The Division will use the bid accepted by the applicant consistent with state contracting laws to determine the final eligible financing~~

~~agreement amount. For Design-Build Projects, the financing agreement will be based on the Design-Build proposal selected by the recipient.~~

~~4. The Completion of Construction date will be revised in the amended financing agreement for the purpose of determining the recipient's final payment schedule. The final Completion of Construction date will be established by mutual agreement between the Division and the recipient. The final Initiation of Operation date will be established in the same manner and starts the one-year Certification Period (see Section XIV.B and Appendix H for more details).~~

~~5. Once the Completion of Construction date has been established in the amended financing agreement, the applicant must request any extensions of the Completion of Construction date in writing at least 90 days before the Completion of Construction date. The Division may approve an extension of the Completion of Construction date for good cause. If the Division does not receive a request for extension of the Completion of Construction date at least 90 days in advance, the Division shall not extend the Completion of Construction date.~~

~~6. After the AOA package has been reviewed and approved by the Division, the Division will prepare an amendment to the financing agreement consistent with the credit review to include the Division's decisions on the AOA package and mail it to the recipient for signature. Signature of the amended agreement by the applicant's Authorized Representative will constitute agreement with the Division's decisions on the AOA. The applicant's Authorized Representative must sign the amended financing agreement acknowledging agreement with the Division's decisions on the AOA prior to disbursement of procurement, construction, or design-build costs.~~

~~1a. Design-Build Projects~~

~~Applicants requesting CWSRF assistance for Design-Build Projects will be required to complete both the "Approval of Construction Financing" process and a Design-Build selection process. The "Approval of Construction Financing" process will follow the requirements described under Section IX above, and the Design-Build process will follow a two-phase selection process. The two-phase selection process is a procurement process, which includes the preparation of a Request for Design-Build Qualifications (RFQ) to pre-qualify the bidders and a Request for Design-Build Proposals (RFP) from the pre-qualified bidders. For additional information on implementation of the Design-Build process, it is recommended that the applicant refer to the RFQ/RFP Guide Section of the 'Design-Build Manual of Practice' published by the Design-Build Institute of America (DBIA) (Phone No. (202) 682-0110).~~

~~Before a RFP is issued, the applicant must complete a RFQ process. The applicant shall prepare RFQ documents for the selection of the most qualified Design-Builders who have the greatest potential to design and build the proposed Project. In this document, the applicant must establish clear and objective standards or criteria which will be used to determine the most qualified firms to be invited to prepare and submit a Design-Build bid proposal. Responses from Design-Builders must be evaluated and Design-Builders must be pre-qualified by the applicant before issuing a RFP.~~

~~Before the RFP is finalized, the applicant shall select a Design-Build Technical Review Panel (Panel) to review the RFP. See below for the Panel selection requirements. The RFP must provide enough information to clearly explain the Project objectives and the design intent. At a minimum, Project objectives, process treatment requirements (design criteria), unit processes, external constraints that apply to the Project, site definition, geotechnical investigations, process definition, performance requirements, permit requirements, and similar information needs to be provided. The minimum effort is similar to completion of a preliminary design that represents approximately 15 to 20 percent of the conventional design effort.~~

~~The Panel shall review the RFP to insure the Design-Build objectives and conditions, as discussed below, are described properly and accurately. Based on the results of the Panel's review, the RFP will be finalized. Only those Design-Builders who are pre-qualified by the applicant will receive the RFP and only they may submit a Design-Build proposal. The RFP must provide a scope of work that is sufficiently detailed to allow pre-qualified bidders to produce cost-effective proposals. Also, criteria for selection of the successful bidder should be communicated clearly and structured such that the qualification-based bidding process is reinforced.~~

~~The applicant will evaluate the bid proposals and make the final selection of the bid proposal that provides the best value. Best value is determined by both qualitative factors (e.g., design solution, management and schedule) and proposed bid price in the evaluation and selection process. The Panel that was used to review the RFP will also review the applicant's evaluation of the bid proposals and make a recommendation to the applicant. If the applicant does not concur with the Panel's recommendation, the applicant must justify overruling the Panel's recommendation.~~

~~2. Technical Review and Panel Selection for Design-Build Projects~~

~~The preparation of a RFP for all Design-Build Projects must be undertaken by CWSRF applicants with the assistance of individuals knowledgeable about public contracting requirements and professionals experienced with performance criteria appropriate to the facility's needs.~~

~~All CWSRF applicants for Design-Build Projects shall meet the following technical review and Panel selection requirements prior to the completion of preliminary (up to 20 percent) design.~~

- ~~a. The proposed technical review effort should be completed in accordance with the RFQ/RFP Guide Section of the Design-Build Manual of Practice published by the DBIA or equal.~~
- ~~b. The technical review must insure that the RFP outlines: 1) the Design-Builder selection criteria clearly; 2) details the Project description, Project objectives, design intent, design criteria, unit processes, responsibility/risk allocation, and submittal requirements; 3) includes the responsibilities of the owner, Design-Builder, Design-Builder's architect (including the engineer and other professionals); 4) specifies responsibility for performance, scheduling, permits, fees and insurance; 5) specifies liquidated damages (if any); 6) and addresses other construction related issues properly and accurately. In addition, the applicant's needs must be described precisely and in a manner that will be universally interpreted and understood.~~
- ~~c. The applicant's consultant, or any company affiliated with the consultant, responsible for performing any portion of the Project design, assisting in preparation of the RFP, or performing the technical review of the RFP, is not permitted to participate on a team to bid on the Design-Build proposal.~~
- ~~d. The applicant's consultant, or any company affiliated with the consultant, but responsible for performing only the Project planning, is permitted to bid on the Design-Build proposal.~~
- ~~e. The applicant, and or consultant, or any company affiliated with the consultant, responsible for performing the Project planning, preparing preliminary design, or assisting in the preparation of the RFP, is not permitted to be the leader of the Panel or comprise more than twenty (20) percent of the Panel membership.~~
- ~~f. The Panel leader will be selected by the applicant using a qualifications-based selection process (Cal. Govt. Code § 4525-4529).~~

~~Applicants may submit a Request for Proposal for Technical Review Services (Proposal) to the Division for review prior to soliciting Panel members. The cost of the technical review effort is eligible under the allowance described in Section XII.~~

~~Failure to complete a technical review effort, in accordance with the referenced DBIA manual, or equal, and the provisions stated above, may result in the proposed Project being ineligible for CWSRF funding.~~

~~C. Value Engineering (VE)~~

~~VE studies are not required, but recommended because of the potential cost savings and design improvements resulting from the VE process. The VE study report, if performed, shall be submitted with the AOA. The VE study report shall describe all the VE recommendations. If any VE recommendations are not being implemented, the submittal shall discuss the reasons for rejection.~~

~~For Design-Build Projects, irrespective of the Project cost, an independent technical review shall be conducted prior to the completion of the RFP. The RFP shall contain the results of the technical review and form the basis for the bidding documents. For information on conducting independent technical reviews, please see Section XI.B.1. This technical review will replace the VE applied to normal design and construction Projects.~~

~~D. Project Performance Standards~~

~~The performance standards for a Project shall be established during the AOA package review. At the end of the one-year Project performance certification period, actual operating data must be compared with the Regional Water Board Waste Discharge Requirements and the Project performance standards.~~

~~Project performance standards may be established in one of two ways:~~

~~The Division will develop performance standards based on Division guidelines, or~~

~~The recipient may develop performance standards and submit them with the AOA package for Division approval.~~

~~Project performance standards shall be based on the Regional Water Board's Waste Discharge Requirements. The standards will describe data necessary for Project certification. For non-discharging Projects (such as I/I correction and pump stations), the Project performance standards include the elimination of overflows and reduction of I/I to the levels specified in a SSES.~~

~~Further information on Project performance standards is included in Appendix H, Guidelines for Project Performance Certification.~~

~~E. Compliance with State Statutes and Authorities~~

~~The applicant's Authorized Representative must certify that the applicant has complied, or will comply, with all applicable State laws. The recipient will be responsible for assuring compliance with applicable State laws.~~

~~F. Compliance With Federal Statutes And Authorities~~

~~Recipients are required to comply with DBE and other applicable federal statutes and authorities shown in this section.~~

~~1. Self-Certification~~

~~The applicant's Authorized Representative will be required to certify that the applicant has complied, or will comply, with all the federal authorities listed in Appendix K.~~

~~2. Disadvantaged Business Enterprise (DBE)~~

~~The recipient must insert the following forms in its contract bidding documents: (1) Contract Provisions Relative to DBE; (2) DBE Certification; and (3) Selected DBE Subcontractors Form. A pre-bid conference with the prospective bidders is strongly encouraged to explain the DBE "positive effort" requirement.~~

~~The recipient must submit six DBE forms with the AOA request package. These are: (1) "Good Faith Effort" Solicitation listing; (2) "Good Faith Effort" Bids Received list; (3) Attachment A, Subcontractor Self Certification; (4) Attachment B, Selected DBE Subcontractors (submitted with the bid); (5) Summary of Bids Received; and (6) the applicant's DBE Positive Effort Certification (see Appendix I, DBE Compliance Guidelines).~~

~~If acceptable "Good Faith" efforts have not been taken, the Division cannot accept the award of the construction contract. Selecting the next low, responsive, responsible bidder, or rebidding the contract, are acceptable alternatives for the recipient if CWSRF assistance is still desired. The financing agreement will be amended to reflect the costs of selection of the next low, responsive, responsible bidder or the low, responsive, responsible bidder after rebidding.~~

~~Recipients shall report DBE utilization to the Division on the DBE Utilization Report, State Water Board Form DBE UR334 (See Appendix J). Reports must be submitted to the Division within thirty (30) calendar days of the end of the semiannual reporting period (April 30 and October 30) until such time as the "Notice of Completion" is issued.~~

XII. CONSTRUCTION/IMPLEMENTATION DISBURSEMENTS

~~All Disbursements to recipients will be re subject to USEPA federal and state requirements and/or limitations notwithstanding any provisions of this Policy. A recipient may Rrequests for Disbursements may be submitted at any time after execution or amendment of a the financing agreement that identifies the specific costs. Costs submitted to the Division must be currently due and payable, but ~~—It will not, however, be necessary for the recipient need not to~~ have actually paid the costs before requesting Disbursements under the financing agreement. The Division will not disburse funds for construction until the recipient adopts the rate increase subject to Proposition 218. (See California Constitution, article XIIC and XIID; Gov. Code, § 53750 et seq.)~~

A. ~~A.~~ Disbursement Requests

- ~~1. The Division will send the recipient ~~will be sent~~ a copy of the Request for Disbursement form ~~from the Division's Disbursement staff (See Appendix M)~~ with the financing agreement. ~~The recipient will be responsible for completing columns C (Costs Incurred to Date) and E (Costs Claimed for Disbursement to Date). The recipient is also responsible for the certification of expenditures by the authorized representative. Appendix F contains specific instructions for requesting disbursements. The Division will send the recipient A~~ a copy of each processed ~~D~~disbursement request ~~will be sent to the recipient~~ to show the total amount disbursed ~~by the Division~~. ~~Specific instructions for requesting Disbursements are also included in Appendix M.~~~~
- ~~2. The recipient must ensure that adequate local funding is available to pay its contractors and vendors in case the disbursement is not processed before payment to the contractor or vendor is due.~~

B. ~~B. Planning, Design, Value Engineering, Construction Management, and Administration (Soft Costs) Requests~~

1. Allowances

~~The Division may disburse eligible allowances (soft costs) that were incurred prior to the effective date of the financing agreement after execution of the financing agreement. Costs previously disbursed under a CWSRF planning/design financing agreement are not eligible for reimbursement. Disbursement of the planning, design, value engineering, construction management, and administration costs can be made after a financing agreement is executed. The total amount (based on the applicant's request) will also be shown on the Disbursement Request Form No. 260 sent to the recipient. Recipients must certify that soft costs work has been completed and that claimed costs were incurred. The recipient must submit invoices or other acceptable documentation acceptable to the Division must be submitted to substantiate disbursement of the soft costs.~~

2. Pre-purchase Material and Equipment

~~The Division may disburse eligible, identified pre-purchased material and equipment used in the project that was purchased in accordance with state law prior to the effective date of the financing agreement, after execution of the initial financing agreement. The Division will make disbursements for actual incurred pre-purchase material and equipment costs supported by documentation to substantiate disbursement of these costs. If the recipient incurs eligible equipment or material costs before the effective date, it does so at its own risk.~~

C. ~~C. Construction Progress Amended or Financing Agreement Equipment Procurement Disbursement Requests~~

The Division may disburse all eligible costs after the agreement is amended to incorporate the actual bid or identified costs. (See Appendix F for instructions.)
~~The recipient will receive a completed copy of the State Water Board Construction Contractor Spreadsheet Form No. 259 with an amended financing agreement. Instructions for completing this form are in Appendix M.~~

- ~~1. When requesting disbursement for construction or equipment procurement, the recipient must include a copy of the Construction Contractor's Pay Estimate or the vendor's invoice along with completed Form Nos. 259 and 260 (See Appendix M for detailed instructions). The Contractor's Pay Estimate or vendor's invoice must be itemized by bid item or show a relationship between the Contractor's Pay Estimate and the bid items or the original purchase order. The Contractor's Pay Estimate. The Division will disburse remaining soft costs paid during construction/implementation as costs are incurred. The Division will review and approve soft costs based on each applicant's project and documentation submitted supporting incurred soft costs. must be signed by the contractor and the authorized representative.~~
- ~~2. The remaining soft costs will be paid during construction as costs are incurred. The soft costs will be reviewed and approved by the Division based on each applicant's project and documentation submitted supporting incurred soft costs.~~
- ~~3. —~~
- ~~4.2. The Division will base construction/implementation Ddisbursement during construction will be based on the amount of money currently due and payable to the contractor or vendor for eligible construction/implementation, material, or procurement equipment icostems, plus soft costs incurred, minus any amounts previously disbursed by the Division.~~

~~The recipient should assure that adequate local funding is available to pay the contractor in case the disbursement is not processed before payment to the contractor is due.~~

~~D. —~~

E.D. Final Disbursement

1. Division staff and the recipient will establish a deadline for submittal of the final disbursement request. The complete final disbursement request must be received by the Division no later than six months after the Completion of Construction date as stated in the financing agreement unless prior approval is granted by the Division in a timely manner. The final disbursement request will not be processed until the Project Completion Report is submitted per section XIV of this Policy.
2. As a courtesy, the Division will normally send a reminder notice approximately three months before the due date for the final disbursement request, but prompt submittal remains the responsibility of the recipient. If the Division has not received the complete final disbursement request and prior approval has not been granted to submit the final disbursement request at a later time, then the Division may deobligate the undisbursed balance of the CWSRF financing agreement.

~~As a courtesy, the Division will normally send a reminder notice approximately three months before the final receipt date, but prompt submittal remains the responsibility of the recipient. If the final disbursement request is not received within six months of the Completion of Construction date in the financing agreement and prior approval has not been granted by the Division to submit the final disbursement request at a later time, the undisbursed balance of the CWSRF financing agreement will be deobligated and made available for other projects.~~

XIII. CONSTRUCTION OR IMPLEMENTATION

A. ~~Preconstruction~~ Pre-Project Conference or Media Events

The recipient ~~should~~ shall notify the Division ~~as soon as of any the preconstruction pre-project conferences or press or public media events related to the project conference with the construction contractor is scheduled.~~ Division staff may choose to attend, sufficient advance notice to allow Division staff to attend, but in any event, with at least 10 days' notice.

B. ~~Construction Inspections: Interim and Final~~

~~1. Interim Inspections~~

~~1.~~ 1. The Division may conduct interim inspections during construction or implementation.

~~2. Final Inspections~~

~~1.2.~~ 2. The Division ~~may~~ will conduct a final project construction inspection. During the final project inspection, the Division and the recipient will establish a due date for submission of the Project Completion Report.

C. ~~Status Progress~~ Reports

At least quarterly, the Recipients shall must submit progress reports on the status of ~~construction project~~ activities starting with the issuance of the executed financing agreement no less frequently than quarterly starting with the issuance of the Notice to Proceed to the contractor and ending on final disbursement. At a minimum ~~t~~ the reports ~~will~~ must contain at least the following information:

1. A summary of progress to date including a description of progress since the last report, percent ~~construction~~ complete, percent ~~contractor~~ invoiced and percent schedule elapsed;
2. A listing of change orders including amount, description of work, and change in contract amount and schedule;
3. Any problems encountered, proposed resolutions, schedule for resolutions and status of previous problem resolutions; and

4. A summary of compliance with environmental conditions, if applicable.
 1. ~~A listing of change orders including amount, description of work, and change in contract amount and schedule; and~~
 2. ~~Any problems encountered, proposed resolutions, schedule for resolutions and status of previous problem resolutions.~~
 3.

XIV. OPERATION PROJECT COMPLETION REPORT

A. Final Project Inspection

~~The Initiation of Operation date is the start of the one-year Project performance certification period. During the certification period, the Division will conduct a Final Project Inspection to determine if the treatment facilities are being maintained and operated satisfactorily, and are capable of meeting performance standards. The Division may choose not to perform a Final Project Inspection if one is unnecessary to evaluate the operation of the specific project, such as sewer collection systems with no pump stations. The Division shall conduct a Final Project Inspection if no construction inspection was performed. If a Final Project Inspection was performed, the Division will prepare a final project inspection report, which will identify areas of operational deficiencies, if they exist.~~

~~Recipients may be required to provide the Division a copy of the Operations and Process Control Manual within the first six months of operation. The Operations and Process Control Manual will be used to assist the Division with the final project inspection and review of the project performance certification.~~

B. Project Performance Report and Certification

~~A. One year after Initiation of Operation, the recipient must is required to notify the appropriate Regional Water Board and the Division certify that the its project was completed by submitting a Project Completion Report to the Division with a copy to the Regional Water Board meets the project performance standards and must submit a project performance report and certification. The Project Completion Report must be submitted on or before the due date established per section XIII(B)(2). The pProject Completion performance rReport should summarize must describe the project, describe the water quality problem the project sought to address, the data collected during the one-year project performance period and discuss the project's likelihood of successfully current and future ability to meet the project performance standards addressing that water quality problem in the future, and summarize compliance with environmental conditions, if applicable.~~

B. The State Water Board expects the recipient to prepare and send a timely and complete report. The State Water Board may avail itself of any legal means to obtain this report. (See Water Code §13267.)

~~The project performance report should also address any items noted as deficient in the final project inspection report. The Division will approve the certification of the project, if appropriate, at the end of the one-year certification period. A detailed outline of the project performance report requirements and certification form for various types of projects can be obtained from the Division.~~

~~If the project cannot be certified, the recipient must prepare a corrective action report, which analyzes the project's inability to meet the project performance standards. The corrective action report must include an estimate of the nature, scope and cost of the corrective action, and a time schedule for meeting the project performance standards. The time schedule must include an estimated date by which the recipient will certify the project and submit a project performance report and certification. The Division will conduct follow-up inspections, as necessary, to monitor the recipient's progress towards meeting the project performance standards. The cost of the corrective action is not eligible for funding assistance.~~

~~If the recipient does not submit a project performance report which includes a signed certificate of performance, or a corrective action report, within fifteen (15) months of the Initiation of Operation date, the Division will stop processing any pending or future applications for new CWSRF funding or bond-funded grants and withhold Disbursements on any existing financial assistance that the recipient may have with the State Water Board until the project performance report and certification, or corrective action report, are submitted.~~

~~At the time of the first billing, the Division shall issue a notification and request for technical report pursuant to Water Code §Section 13267, and may use any other legal means to obtain the project performance report and certificate or corrective action report from the recipient.~~

~~Further information on project performance certification is included in Appendix H.~~

XV. RECORD KEEPING REQUIREMENTS

The Recipient ~~must~~ are required to maintain separate project accounts in accordance with federal requirements as specified in the financing agreement, generally accepted government accounting standards. (See OMB Circular A-133.) In most cases, the records retention period will be thirty-six (36) years. More specifically, the following records must be maintained:

~~Accounts accurately depicting amounts received and expended for the project, including all funds received from the CWSRF;~~

~~Recipient's wastewater program income data; and~~

~~Total cost of the project, including allowance costs.~~

~~Invoices must be maintained for a period of at least three years after Planning Document(s) Approval Letter/Preliminary Funding Commitment for planning financing agreements, or submittal and acceptance of an affirmative Project Performance Certification for construction financing agreements. All other records must be kept for the life of the financing agreement.~~

XVI. CONSTRUCTION/IMPLEMENTATION FINANCING CONSTRUCTION PAYMENTS

A. Interest and other charges, if applicable, will accrue on all disbursements as of the date of each disbursement ~~is made~~. The Division will issue a revised payment schedule after the recipient submits an approvable final disbursement request.

B. ~~Other than for Extended Term Financing, financing agreements will be fully amortized no later than twenty (20) years after Completion of Construction. The amount to be paid will include the amount financed plus accrued interest, administration service, and SCG funding charges, if applicable. Extended Term Financing will extend no longer than thirty (30) years after Completion of Construction and is subject to any conditions or restrictions set forth by USEPA. (See Appendix A.)~~

C. ~~The Division will prepare a payment schedule that includes:~~

~~1. _____'s approval~~

~~The Division will prepare a payment schedule that includes:~~

~~1. The interest rate, administration service ratecharge, and SCG DAC Funding charge, if applicable;~~

~~2. Accrued interest;~~

~~Service or DAC Funding charges, if applicable;~~

~~2. Amount of CWSRF funding;~~

~~3. The final principal amount of the financing agreement including accrued interest, administration service charge, and SCG DAC Funding charge, if applicable; and~~

~~3.4. _____ A complete amortization table.~~

D. ~~The recipient must make its first annual payment ~~will be due~~ one year following the Completion of Construction date, as established in the ~~amended~~ financing agreement ~~under Section X~~.~~

~~1. Loans and most financing agreements will be fully amortized no later than twenty (20) years after Completion of Construction. The amount to be paid will include the amount financed plus accrued interest, service, and DAC~~

~~Funding charges, if applicable. Extended Term Financing agreements may extend no longer than thirty (30) years after Completion of Construction and are subject to conditions or restrictions as set forth in USEPA's approval (See Appendix G). As a courtesy, the Division will normally send a payment notice approximately thirty (30) days before the date each payment ~~is due~~ date, but prompt payment remains the responsibility of the recipient.~~

~~1.2. _____ The recipient will have a ten-day grace period, after which time the State Water Board will assess a penalty in the amount of costs incurred ~~to the State Water Board will be assessed for late payment. These costs may include, but are not limited to, for~~ lost interest earnings, staff time, bond ~~debt service~~ default penalties, and other costs incurred or flowing from the late payment. Any ~~such~~ penalties ~~collected~~ will be deposited in the CWSRF account. Penalties ~~assessed~~ will not change the principal balance of the financing agreement. ~~Such penalties and~~ will be treated as a separate receivable in addition to the annual payment due.~~

~~A.E. _____ All payments are to be sent to:~~

~~CWSRF Accounting Office
State Water Resources Control Board
Attention: CWSRF Program
Post Office Box 1888
Sacramento, CA 95812-1888~~

XVII. BOARD RESERVATION OF AUTHORITY

~~A. Prior to the sign ~~approving of~~ any financing ~~agreement~~, the State Water Board reserves the right to modify this CWSRF Policy as necessary to provide for effective and equitable use of CWSRF funds, including:~~

~~1. Reducing the eligible funding amount for any project for due cause;~~

~~2. Conforming to applicable state and federal laws, rules, regulations, or agreements, including but not limited to the Operating Agreement, the Capitalization Grant Agreement, and agreements related to any CWSRF revenue bonds.~~

~~Adjusting the terms for payment of the CWSRF assistance consistent with applicable statutes.~~

~~B. The Executive Director may waive the requirements of this Policy in order to comply with the American Recovery and Reinvestment Act of 2009. Any such action will be taken only in a manner consistent with applicable federal and State requirements and after any prospective recipient, adversely affected by the action, has had an opportunity to comment on the proposed action. The Deputy Director of the Division may update and amend the CWSRF Policy Appendices and create new Appendices, unless doing so would require additional approval by USEPA or the Executive Director, as necessary for administrative or procedural changes; not in conflict with the ~~this~~ CWSRF Policy.~~

XVIII. ~~ELIGIBILITY DISPUTES~~

~~A. Division A~~ approvals or actions taken under previous versions of this Policy remain valid. ~~Approvals-Division approvals~~ or actions after the effective date of this Policy amendment that conflict with or are inconsistent with approvals or actions taken under previous versions of this Policy ~~shall~~will be resolved by the Deputy Director of the Division.

~~B. -An applicant or recipient may appeal a staff decision within 30 days to the Deputy Director of the Division or designee, for a final Division decision. An applicant or recipient may appeal a final Division decision to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and each State Water Board Member. Upon the motion of any State Water Board Member, the State Water Board will review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the final Division decision, this decision will represent a final agency action on the dispute.~~

~~A.-Where a financing agreement has been executed, the dispute provisions of that agreement will control, and the dispute provisions of this section are inapplicable.~~
staff

~~C.~~

~~In the event that a Division Staff Decision is not acceptable, the applicant or recipient may appeal within 30 days to the Deputy Director of the Division or designee, for a final Division Decision. If the applicant or recipient is not satisfied by the final Division Decision, the applicant or recipient may appeal to the State Water Board within 30 days. The Office of the Chief Counsel of the State Water Board will prepare a summary of the dispute and make recommendations relative to its final resolution, which will be provided to the State Water Board's Executive Director and all the State Water Board Members. Upon the motion of any State Water Board Member, the State Water Board will undertake to review and resolve the dispute in the manner determined by the State Water Board. Should the State Water Board determine not to review the Final Division Decision, this decision will represent a final agency action on the dispute.~~

~~These provisions do not pertain to disputes under an executed financing agreement. Such disputes shall be resolved in accordance with the disputes resolution provisions of the financing agreement.~~